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federal register

WEDNESDAY, MARCH 1, 1978



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	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

Documents normally scheduled for publication 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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Federal Agencies using this table in calculating time requirements for submissions must allow sufficient extra time for FEDERAL REGISTER scheduling procedures.

In computing dates certain, the day after publication counts as one. All succeeding days are counted except that when a date certain falls on a weekend or holiday, it is moved forward to the next Federal business day. (See 1 CFR 18.17)

A new table will be published monthly in the first issue of each month.

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AGENCY ABBREVIATIONS USED IN HIGHLIGHTS AND REMINDERS

(This List Will Be Published Monthly In First Issue Of Month.)

USDA—AGRICULTURE DEPARTMENT

AMS—Agricultural Marketing Service
ARS—Agricultural Research Service
ASCS—Agricultural Stabilization and Conservation Service
APHIS—Animal and Plant Health Inspection Service
CCC—Commodity Credit Corporation
CEA—Commodity Exchange Authority
CSRS—Cooperative State Research Service
EMS—Export Marketing Service
ERS—Economic Research Service
FmHA—Farmers Home Administration
FCIC—Federal Crop Insurance Corporation
FAS—Foreign Agricultural Service
FNS—Food and Nutrition Service
FSQS—Food Safety and Quality Service
FS—Forest Service
PSA—Packers and Stockyards Administration
RDS—Rural Development Service
REA—Rural Electrification Administration
RTB—Rural Telephone Bank
SCS—Soil Conservation Service

COMMERCE—COMMERCE DEPARTMENT

Census—Census Bureau
EDA—Economic Development Administration
ITA—Industry and Trade Administration
MA—Maritime Administration
MBE—Minority Business Enterprise Office
NBS—National Bureau of Standards
NFPCA—National Fire Prevention and Control Administration
NOAA—National Oceanic and Atmospheric Administration
NSA—National Shipping Authority
NTIS—National Technical Information Service
PTO—Patent and Trademark Office
USTS—United States Travel Service

DOD—DEFENSE DEPARTMENT

AF—Air Force Department
Army—Army Department
DCPA—Defense Civil Preparedness Agency
DIA—Defense Intelligence Agency
DLA—Defense Logistics Agency
Engineers—Engineers Corps
Navy—Navy Department

DOE—ENERGY DEPARTMENT

BPA—Bonneville Power Administration
ERA—Economic Regulatory Administration
EIA—Energy Information Administration
ERO—Energy Research Office
ETO—Energy Technology Office
FERC—Federal Energy Regulatory Commission

HEW—HEALTH, EDUCATION, AND WELFARE DEPARTMENT

ADAMHA—Alcohol, Drug Abuse, and Mental Health Administration
CDC—Center for Disease Control
FDA—Food and Drug Administration
HCFA—Health Care Financing Administration
HDSO—Human Development Services Office
HRA—Health Resources Administration
HSA—Health Services Administration
NIH—National Institutes of Health
OE—Office of Education
PHS—Public Health Service
RSA—Rehabilitation Services Administration
SSA—Social Security Administration

HUD—HOUSING AND URBAN DEVELOPMENT DEPARTMENT

CARF—Consumer Affairs and Regulatory Functions, Office of Assistant Secretary
CPD—Community Planning and Development, Office of Assistant Secretary
FDAA—Federal Disaster Assistance Administration
FHEO—Fair Housing and Equal Opportunity, Office of Assistant Secretary
FHC—Federal Housing Commissioner, Office of Assistant Secretary for Housing
FIA—Federal Insurance Administration
GNMA—Government National Mortgage Association
ILSRO—Interstate Land Sales Registration Office
NCA—New Communities Administration
NCDC—New Community Development Corporation
NVACP—Neighborhoods Voluntary Associations and Consumer Protection, Office of Assistant Secretary

INTERIOR—INTERIOR DEPARTMENT

BIA—Bureau of Indian Affairs
BLM—Bureau of Land Management
FWS—Fish and Wildlife Service
GS—Geological Survey
HCRS—Heritage Conservation and Recreation Service
MESA—Mining Enforcement and Safety Administration
Mines—Mines Bureau
NPS—National Park Service
OHA—Office of Hearings and Appeals
Reclamation—Reclamation Bureau
SMRE—Surface Mining Reclamation and Enforcement Office

JUSTICE—JUSTICE DEPARTMENT

DEA—Drug Enforcement Administration
INS—Immigration and Naturalization Service
LEAA—Law Enforcement Assistance Administration
NIC—National Institute of Corrections

LABOR—LABOR DEPARTMENT

BLS—Bureau of Labor Statistics
BRB—Benefits Review Board
ESA—Employment Standards Administration
ETA—Employment and Training Administration
FCCPO—Federal Contract Compliance Programs Office
LMSEO—Labor Management Standards Enforcement Office
OSHA—Occupational Safety and Health Administration
P&WBP—Pension and Welfare Benefit Programs
W&H—Wage and Hour Division

STATE—STATE DEPARTMENT

AID—Agency for International Development
FSGB—Foreign Service Grievance Board

DOT—TRANSPORTATION DEPARTMENT

CG—Coast Guard
FAA—Federal Aviation Administration
FHWA—Federal Highway Administration
FRA—Federal Railroad Administration
MTB—Materials Transportation Bureau
NHTSA—National Highway Traffic Safety Administration
OHMO—Office of Hazardous Materials Operations
OPSO—Office of Pipeline Safety Operations
SLS—Saint Lawrence Seaway Development Corporation
UMTA—Urban Mass Transportation Administration

TREASURY—TREASURY DEPARTMENT

ATF—Alcohol, Tobacco and Firearms Bureau
Customs—Customs Service
Comptroller—Comptroller of the Currency
ESO—Economic Stabilization Office (temporary)
FS—Fiscal Service
IRS—Internal Revenue Service
Mint—Mint Bureau
PDB—Public Debt Bureau
RSO—Revenue Sharing Office

INDEPENDENT AGENCIES

ATBCB—Architectural and Transportation Barriers Compliance Board
CAB—Civil Aeronautics Board
CASB—Cost Accounting Standards Board
CEQ—Council on Environmental Quality
CFTC—Commodity Futures Trading Commission
CITA—Textile Agreements Implementation Committee
CPSC—Consumer Product Safety Commission
CRC—Civil Rights Commission
CSA—Community Services Administration
CSC—Civil Service Commission
CSC/FPRAC—Federal Prevailing Rate Advisory Committee
EEOC—Equal Employment Opportunity Commission
EXIMBANK—Export-Import Bank of the U.S.
EPA—Environmental Protection Agency
ESSA—Endangered Species Scientific Authority
ERDA—Energy Research and Development Administration
FCC—Federal Communications Commission
FCSC—Foreign Claims Settlement Commission
FDIC—Federal Deposit Insurance Corporation
FEA—Federal Energy Administration
FEC—Federal Election Commission
FHLBB—Federal Home Loan Bank Board
FMC—Federal Maritime Commission
FPC—Federal Power Commission
FRS—Federal Reserve System
FTC—Federal Trade Commission
GSA—General Services Administration
GSA/ADTS—Automated Data and Telecommunications Service
GSA/FPA—Federal Preparedness Agency
GSA/FSS—Federal Supply Service
GSA/NARS—National Archives and Records Service
GSA/PBS—Public Buildings Service
ICC—Interstate Commerce Commission
ICP—Interim Compliance Panel (Coal Mine Health and Safety)
ITC—International Trade Commission
LSC—Legal Services Corporation
NACEO—National Advisory Council on Economic Opportunity
NASA—National Aeronautics and Space Administration
NCUA—National Credit Union Administration
NFAH/NEA—National Endowment for the Arts
NFAH/NEH—National Endowment for the Humanities
NLRB—National Labor Relations Board
NRC—Nuclear Regulatory Commission
NSF—National Science Foundation
NTSB—National Transportation Safety Board
OFR—Office of the Federal Register
OMB—Office of Management and Budget
OPIC—Overseas Private Investment Corporation
PADC—Pennsylvania Avenue Development Corporation
PRC—Postal Rate Commission
PS—Postal Service
RB—Renegotiation Board
RRB—Railroad Retirement Board
ROAP—Reorganization, Office of Assistant to President
SBA—Small Business Administration
SEC—Securities and Exchange Commission
TVA—Tennessee Valley Authority
USIA—United States Information Agency
VA—Veterans Administration
WRC—Water Resources Council

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

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This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

H.R. 3454..... Pub. L. 95-237
"Endangered American Wilderness Act of 1978." (Feb. 24, 1978; 92 Stat. 40) Price $.70.

S. 1340..... Pub. L. 95-238
"Department of Energy Act of 1978—Civilian Applications." (Feb. 25, 1978; 92 Stat. 47) Price $1.50.

presidential documents

[3195-01]

Title 3—The President

Memorandum of February 13, 1978

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended, (the "Act"), Authorizing the Use of $5,750,000 of Funds Made Available from the United States Emergency Refugee and Migration Assistance Fund

[Presidential Determination No. 78-5]

Memorandum for the Secretary of State

THE WHITE HOUSE,
Washington, February 13, 1978.

In order to meet unexpected urgent needs arising in connection with the admission of 7,000 Indochinese refugees presently in Thailand and elsewhere who are authorized by the Attorney General on January 25, 1978, for parole entry into the United States, and to similarly assist such other Indochinese refugees as may be otherwise admitted, I hereby determine, pursuant to Section 2(c)(1) of the Act, that it is important to the national interest that $5,750,000 from the United States Emergency Refugee and Migration Assistance Fund be made available to the Department of State for this purpose.

The Secretary of State is requested to inform the appropriate committees of the Congress of this Determination and the obligation of funds made under this authority.

This determination shall be published in the FEDERAL REGISTER.

Jimmy Carter

[FR Doc. 78-5496 Filed 2-27-78; 2:41 pm]

[3195-01]

Memorandum of February 15, 1978

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended, (the "Act") Authorizing the Use of $300,000 of Funds Made Available From the United States Emergency Refugee and Migration Assistance Fund

[Presidential Determination 78-6]

Memorandum for the Secretary of State

THE WHITE HOUSE,
Washington, February 15, 1978.

In order to meet unexpected and urgent needs arising from political and security actions against substantial numbers of persons in Latin America, I hereby determine, pursuant to Section 2(c)(1) of the Act, that it is important to the national interest that up to $300,000 of funds appropriated under the United States Emergency Refugee and Migration Assistance Fund be contributed to the Intergovernmental Committee for European Migration for the resettlement of refugees and detainees from Latin America to third countries abroad.

The Secretary of State is requested to inform the appropriate committees of the Congress of this Determination and obligation of funds under this authority.

This determination shall be published in the FEDERAL REGISTER.

Jimmy Carter

[FR Doc. 78-5497 Filed 2-27-78; 2:42 pm]

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.

[1505-01]

Title 1—General Provisions

CHAPTER I—ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

CFR CHECKLIST

1977 Issuances

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal regulations issued to date for 1977. New units issued during the month are announced on the back cover of the daily FEDERAL REGISTER as they become available.

For a Checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the Cumulative List of CFR Sections Affected, which is revised monthly.

The rate for subscription service to all revised volumes issued for 1977 is $350 domestic, $75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1977):

Title	Price
1	$1.65
2 [Reserved]	
3	3.00
4	3.25
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7 Parts:	
0-45	5.30
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1 (§§ 1.301-1.400)	3.75
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34	1.70
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[6325-01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Energy

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: An additional position of Staff Assistant to the Director, Executive Secretariat, is excepted from the competitive service under Schedule C because it is confidential in nature.

EFFECTIVE DATE: March 1, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3331(s)(1) is amended as set out below:

§ 213.3331 Department of Energy.

* * * * *

(s) *Office of the Director, Executive Secretariat.* (1) Two Staff Assistants to the Director.

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

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-5501 Filed 2-28-78; 8:45 am]

[3410-16]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY

PART 2—DELEGATION OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Clean Water Act of 1977 Implementation

AGENCY: U.S. Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document provides delegations of authority to the Assistant Secretary of Agriculture for Conservation, Research, and Education and the Administrator, Soil Conservation Service, relating to section 35 of the Clean Water Act of 1977.

EFFECTIVE DATE: March 1, 1978.

FOR FURTHER INFORMATION CONTACT:

M. D. Burdick, Director, Resource Development Division, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, D.C. 20013, 202-447-4554.

SUPPLEMENTARY INFORMATION: On December 28, 1977, President Carter signed the Clean Water Act of 1977, Pub. L. 95-217. This Act, among other purposes, directs the Secretary of Agriculture, with concurrence of the Administrator of the Environmental Protection Agency, to establish and administer a program to enter into contracts with rural landowners and operators for the purpose of installing and maintaining practices and measures to control rural nonpoint source pollution. Landusers within designated high priority areas will have the opportunity to enter into 5-10 year contracts based on plans approved by local soil conservation districts. Technical and financial assistance provided under these contracts will be based on the landuser's agreement to manage his land in accordance with locally identified "best management practices."

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

Subpart C—*Delegations of Authority to the Deputy Secretary, Assistant Secretaries, the Director of Economics, Policy Analysis and Budget, and the Director, Office of Governmental and Public Affairs.*

Section 2.19 is amended by adding a new paragraph (f)(9) to read as follows:

§ 2.19 Delegations of authority to the Assistant Secretary for Conservation, Research and Education.

* * * * *

(f) ***

(9) Administer responsibilities and functions assigned under section 35 of the Clean Water Act of 1977, Pub. L. 95-217, to the Secretary of Agriculture.

* * * * *

Subpart G—*Delegation of Authority by the Assistant Secretary for Conservation, Research and Education.*

Section 2.62 is amended by adding a new paragraph (a)(11) to read as follows:

§ 2.62 Administrator, Soil Conservation Service.

(a) ***

(11) Administer rural water quality cost-sharing program and other responsibilities assigned under section 35 of the Clean Water Act of 1977, Pub. L. 95-217.

* * * * *

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.)

For Subpart C:

Dated: February 16, 1978.

BOB BERGLAND,
Secretary of Agriculture.

For Subpart G:

Dated: February 16, 1978.

M. RUPERT CUTLER,
Assistant Secretary for Conservation, Research and Education.

[FR Doc. 78-5350 Filed 2-28-78; 8:45 am]

[3510-24]

Title 13—Business Credit and Assistance

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 308—SPECIAL ECONOMIC DEVELOPMENT AND ADJUSTMENT ASSISTANCE GRANTS

PART 309—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

Amendments

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Final rule.

SUMMARY: These regulations revise certain aspects of EDA's Special Economic Development and Adjustment Assistance Grant program. These changes are necessary to bring the program regulations into conformance with the program's authorizing legislation, as amended. The intended effect of these amendments is to update EDA's regulations.

DATES: Effective date: February 21, 1978. Comments by: March 31, 1978.

ADDRESS: Send comments to: Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:

Information on these regulations only: James F. Marten, U.S. Department of Commerce, Room 7009, Washington, D.C. 20230, 202-377-5441.

SUPPLEMENTARY INFORMATION: Pub. L. 94-487 made several changes to Title IX of the Public Works and Economic Development Act of 1965 (PWEDA). These amendments implement those statutory changes. Each amendment and the legislative change which necessitated it are described below.

PART 308

1. § 308.4 has been amended to include a new criterion under which the Assistant Secretary may award adjustment grants. As the result of an amendment to section 903(a)(1) of PWEDA, the Assistant Secretary may grant assistance to an eligible applicant which demonstrates "long-term economic deterioration". A new paragraph (2) is added to subsection (a) of § 308.4 to describe this eligibility criterion. Paragraphs (i) through (iv) of § 308.4(a)(2) contain examples of conditions which may create "long-term economic deterioration."

2. § 308.5 has been revised in several places to reflect a number of amendments to Title IX of PWEDA.

§ 308.5(b)(8) has been revised to reflect the eligibility of businesses for relocation assistance. Previously, such assistance was available only for individuals. This change was necessitated by an amendment to section 903(a)(1) of PWEDA.

§ 308.5(b)(12) also has been revised to conform its language to section 903(a)(1) of PWEDA, as amended.

§ 308.5(c) has been revised to include an additional method, payments to reduce interest on guaranteed loans, through which recipients may redistribute Title IX assistance. This change was required by an amendment to section 903(a)(2)(A) of PWEDA. Paragraph (c) has also been re-written to improve its clarity.

3. § 308.24 has been revised by making certain technical and format changes and by including payments to reduce interest on guaranteed loans among the forms of business development assistance available through Title IX. As with the change to § 308.5(c), this revision was necessitated by an amendment to section 903(a)(2)(A) of PWEDA.

4. § 308.27 has been revised by making certain technical and format changes, such as giving the section a new title, and by listing criteria for

the extension of relocation assistance to businesses. New paragraph (c) contains the requirements for and restrictions on the use of relocation assistance for businesses.

5. New § 308.28 has been added to Part 308 to incorporate certain materials removed from § 308.27.

As a result of the inclusion of the new § 308.28, the previous § 308.28 is renumbered as § 308.29.

PART 309

1. § 309.3 has been amended by adding to it a new paragraph (i) to discuss the relationship between the relocation assistance authorized by Title IX and the general prohibition on the use of EDA assistance for relocation purposes.

Because these amendments relate to the EDA grant and loan program, they are exempt from the procedures described in section 553 of the Administrative Procedure Act (5 U.S.C. 553). However, in the spirit of public policy set forth in that Act, interested persons may submit written suggestions regarding these amendments to the Assistant Secretary for Economic Development at the above address.

EDA has determined that this document does not constitute a major proposal requiring the preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular No. A-107.

Accordingly, 13 CFR Chapter III is hereby amended by revising Parts 308 and 309 to read as follows:

1. § 308.4(a) is revised to read as follows:

§ 308.4 Award of adjustment grants.

(a) The Assistant Secretary may make grants directly to an eligible recipient in an area for which the Assistant Secretary has made one of the following determinations.

(1) The area has experienced, or may reasonably be foreseen to be about to experience, a special economic development need. This need may arise from actual or threatened severe unemployment caused by economic dislocation, including unemployment caused by actions of the Federal Government or by compliance with Federal regulations, and from economic adjustment problems resulting from severe changes in economic conditions.

(2) The area has demonstrated long-term economic deterioration in its local economic base which contributes to the out-migration of economic activity and results in a decrease in employment opportunities. This situation may arise in one or more of the following ways:

(i) Widespread obsolescence of existing plant capacity and a lack of captial reinvestment in the area;

(ii) A continuing shift in consumption patterns producing a long-term decline in demand for the output of a major component of the area's economic base;

(iii) Inadequacy of an area's support facilities relative to the changing requirements of its major economic activities; and

(iv) Gradual depletion of a natural resource that has been a major component of the economic base of the area.

Grants will not be made which would have the purpose and effect of replacing the efforts of the economic adjustment program of the Department of Defense.

* * * * *

2. Paragraphs (b) and (c) of § 308.5 are revised to read as follows:

§ 308.5 Use of adjustment grants.

* * * * *

(b) * * *

(9) Relocation of businesses and individuals;

* * * * *

(12) Other assistance which demonstrably furthers the economic adjustment objectives of this part. The nature of this assistance will depend on the specific adjustment problem which is encountered. Any assistance granted under this paragraph is subject to normal statutory and regulatory restrictions.

(c) Adjustment grants to carry out a plan may be disbursed by eligible recipients through direct expenditures or through redistribution by them to public and private entities.

(1) Adjustment grants may be re-distributed in the form of grants to public and private non-profit entities only.

(2) Adjustment grants may be re-distributed in the form of loans, loan guarantees, payments to reduce interest on guaranteed loans, or other appropriate assistance to public and private entities.

3. § 308.24 is revised to read as follows:

§ 308.24 Business development.

(a) An adjustment grant may be used for business development purposes if the business development has a reasonable relation to the purpose of Title IX. Business development grants may be used:

(1) For the purchase, development and operation of land and facilities (including machinery and equipment) for industrial or commercial usage, including the construction of new buildings;

(2) For the rehabilitation of abandoned or unused buildings; and

(3) For the alteration, conversion or enlargement of existing buildings.

(b) Business development assistance may be made through any of the following activities:

(1) Purchasing evidences of indebtedness;

(2) Making fixed asset loans and working capital loans (which may include participation in loans);

(3) Guaranteeing fixed asset loans and working capital loans made to private borrowers by private lending institutions for any of the purposes of this subsection upon application by the lending institutions;

(4) Making payments to reduce interest on guaranteed loans; and

(5) Guaranteeing rental payments or leases for buildings and equipment.

(c) Title IX grants may be used to fund all or part of the cost of the activities described in this section.

4. § 308.27 is revised in its entirety, including its title, to read as follows:

§ 308.27 Relocation assistance.

(a) An adjustment grant may be used to assist in the relocation of individuals and businesses if such assistance has a reasonable relation to the purposes of Title IX and meets the criteria contained in paragraphs (b) and (c) of this section as appropriate.

(b) An adjustment grant may be used to assist in the relocation of unemployed workers and their families living with them only if both the following conditions are met:

(1) It is reasonably clear that alternative employment will not occur for such workers in their present locations during the process of long-range economic adjustment; and

(2) Relocation assistance funded under the Comprehensive Employment and Training Act of 1973 or the Trade Act of 1974 is not available to such workers.

(c) An adjustment grant may be used to assist in the relocation of businesses within the same area when it is reasonably clear that alternative opportunities for the operation of such businesses will not occur in their present locations during the process of long-range economic adjustment.

(1) For purposes of this paragraph, the words "same area" mean that geographic area which will allow employees of relocating businesses to retain their jobs.

5. A new § 308.28 is added and existing § 308.28 is renumbered as § 308.29 to read as follows:

§ 308.28 Other uses of adjustment assistance.

The Assistant Secretary may make adjustment grants available for public services, rent supplements, mortgage payment assistance, training, and for other appropriate uses if reasonably related to the purposes of Title IX and if useful to carry out a plan.

§ 308.29 General requirements.

* * * * *

1. A new subsection (i) is added to § 309.3 to read as follows:

§ 309.3 Nonrelocation.

* * * * *

(i) Relocation assistance made under the authority of Title IX of the Act and meeting the requirements of § 308.27 is not prohibited by this section.

AUTHORITY: Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.); sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

Dated: February 21, 1978.

ROBERT T. HALL,
Assistant Secretary for Economic Development.

[FR Doc. 78-5384 Filed 2-28-78; 8:45 am]

[6320-01]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Regulation PR-171, Amdt. 36]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Transfer of Authority From the Chief Administrative Law Judge to the Board's Secretary

AGENCY: Civil Aeronautics Board.

ACTION: Final Rule.

SUMMARY: This rule transfers from the Chief Administrative Law Judge to the Board's Secretary certain authority for granting continuances and extensions of time. This rulemaking, undertaken on the Board's own initiative, is designed to improve the management of the Board's responsibilities.

DATES: Effective: February 23, 1978. Adopted: February 23, 1978.

FOR FURTHER INFORMATION CONTACT:

Phyllis T. Kaylor, Secretary, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5068.

SUPPLEMENTARY INFORMATION: Section 302.17 of the Board's rules of practice provides that the Board, the Chief Administrative Law Judge, or the administrative law judge assigned to a proceeding may grant continuances and extensions of time. In actual practice, most continuances and extensions are granted by the Chief Administrative Law Judge since they occur: (i) In cases which are not the subject of formal hearings, or (ii) at times before or after the assignment of a presiding administrative law judge. We believe that it is preferable that the Secretary rather than the Chief Administrative Law Judge have this ongoing responsibility so that the Chief Judge can devote his full time and effort to the administration of the Board's trial caseload.

The Secretary will undertake her responsibility in cooperation with those offices and bureaus of the Board responsible for processing the item to which the continuance or extensions of time is directed. Although we shall delete the name of the Chief Administrative Law Judge from Rule 17, he will continue to exercise the power now held by the administrative law judge assigned to a proceeding where that administrative law judge is unavailable.

Since this amendment affects a rule of agency organization and procedure, the Board finds that notice and public procedure are unnecessary, and that the rule may become effective immediately.

Accordingly, the Board amends section 302.17 of its rules of practice to read as follows:

§ 302.17 Continuances and extensions of time.

(a) *Generally.* Whenever a party has the right or is required to take action within a period prescribed by this part, by a notice given thereunder, or by an order or regulation, the Board, the Secretary or the administrative law judge assigned to the proceeding may: (i) Before the expiration of the prescribed period, with or without notice, extend such period; or (ii) upon motion, permit the act to be done after the expiration of the specified period, where the failure to act is clearly shown to have been the result of excusable neglect.

(b) *Procedures.* Except where an administrative law judge has been assigned to a proceeding, requests for continuances or extensions of time, as described in clauses (i) or (ii) of paragraph (a), shall be directed to the Board or its Secretary. Requests for continuances and extensions of time may be directed to the Chief Administrative Law Judge in the absence of the administrative law judge assigned to the proceeding.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989, 49 U.S.C. 1324 (note).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-5425 Filed 2-28-78; 8:45 am]

[3510-13]

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE

PART 16—PROCEDURES FOR A VOLUNTARY CONSUMER PRODUCT INFORMATION LABELING PROGRAM

Amendment To Permit CPILP Labels To Include Information About a Performance Characteristic When Another Federal Agency Requires Labeled Information About That Characteristic

AGENCY: Assistant Secretary for Science and Technology, U.S. Department of Commerce.

ACTION: Rule.

SUMMARY: This document amends the procedures for the Voluntary Consumer Product Information Labeling Program (CPILP) to authorize the Department of Commerce to include on CPILP labels for selected consumer products information about performance characteristics which are included in the labeling program of another Federal agency, provided the other agency agrees. The object of the amendment is to decrease the complexity of labeling for manufacturers by enabling them to comply with the labeling requirements of other Government programs through participation in CPILP, and to simplify product comparison by consumers at the point of sale.

EFFECTIVE DATE: March 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Howard I. Forman, Deputy Assistant Secretary for Product Standards, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-3221.

SUPPLEMENTARY INFORMATION: On May 25, 1977, the Department of Commerce announced in the FEDERAL REGISTER (42 FR 26647) procedures under which a Voluntary Consumer Product Information Labeling Program administered by the Department will function. The Department determined that the program would be instituted on a limited pilot project basis. The goal of this program is to make available to consumers, at the point of sale, information on consumer product performance in an understandable and useful form.

Other Government agencies—such as the Federal Trade Commission, the Consumer Product Safety Commission, and the Environmental Protection Agency—also are proposing or considering various information disclosure requirements for consumer products. In many cases, however, it would be desirable to provide on a single label information of interest to con-

sumers about a wider range of attributes than is being considered for labeling requirements by any one agency. For selected consumer products, the Department of Commerce desires to make CPILP labels compatible with the corresponding labeling requirements or recommendations promulgated by other agencies, so that the information disclosure requirements of those agencies can be satisfied by participation in CPILP. In such cases, product labeling would be simplified for manufacturers participating in CPILP since compliance with those other agency requirements would be assured. Product comparison by consumers at the point of sale also would be simplified since all of the information would be on a single label having a uniform, consumer-oriented format.

The final sentence in § 16.2(b) of the CPILP procedures states that: "The program seeks to avoid the duplication of other Federal programs under which performance characteristics are labeled by exempting those performance characteristics from this program." In view of the above stated desire of the Department of Commerce to include on CPILP labels performance characteristics which are included in other Federal labeling programs, a proposed amendment was published in the FEDERAL REGISTER (42 FR 64909, December 29, 1977) to amend the final sentence of § 16.2(b) of the CPILP procedures. It was emphasized in the preamble to the proposed amendment that CPILP is a voluntary program, and that manufacturers can comply with the labeling requirements of other Federal agencies without participating in CPILP. Interested persons were invited to submit written comments on the proposed amendment on or before January 30, 1978.

Comments concerning the proposed amendment were received from two sources. A card dated January 3, 1978, from Amy Beckett, 1310 East Meadowmere, Springfield, Mo. 65804, endorsed "the Commerce Department proposal to coordinate Federal product labeling requirements." The second letter dated January 16, 1978, was received from Lawrence H. Hodges, Vice President, Technical Affairs, J I Case Co., 700 State Street, Racine, Wis. 53404. This letter states, "J I Case Co. supports the Department's proposal that certain mandated labeling required by the regulations of other regulatory agencies and the labeling required by voluntary participants in the DoC's 'Voluntary Consumer Product Information Labeling Program (CPILP) be, in some instances, incorporated into one label.' "

Copies of the two letters of comment received, and a summary and analysis of these letters are available for public inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between E Street and Constitution Avenue NW., Washington, D.C. 20230.

For purposes of clarity, the amendment language was changed slightly so that the amendment consists of adding a new sentence at the end of § 16.2(b). Accordingly, the CPILP procedures are hereby amended as set forth below.

NOTE.—The Department of Commerce has determined that adoption of this amendment does not constitute a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and Office of Management and Budget Circular No. A-107.

Issued: February 24, 1978.

JORDAN J. BARUCH,
Assistant Secretary for Science and Technology.

§ 16.2 [Amended]

15 CFR Part 16 is amended by adding the following sentence at the end of § 16.2(b):

However, where the Federal agency concerned agrees, the Department of Commerce may include information about those performance characteristics in CPILP labels if, by doing so, product comparison at the point of sale is simplified for consumers, and the complexity of product labeling is reduced for the manufacturers by enabling them to comply with the labeling requirements of other Federal agencies through participation in CPILP.

Section 16.2(b), as amended, will read in its entirety as follows:

§ 16.2 Description and goal of program.

* * * * *

(b) The program involves voluntary labeling by enrolled participants of selected categories of consumer products with information concerning selected performance characteristics of those products. The performance characteristics selected are those that are of demonstrable importance to consumers, that consumers cannot evaluate through mere inspection of the product, and that can be measured objectively and reported understandably to consumers. The consumer products covered include those for which incorrect purchase decision can result in financial loss, dissatisfaction, or inconvenience. The program seeks to avoid the duplication of other Federal programs under which performance characteristics are labeled by exempting those performance characteristics from this program. However, where the Federal agency concerned agrees, the Department of Commerce may include information about those performance characteristics in CPILP labels if, by doing so, product comparison at the point of sale is simplified for consumers, and the complexity of product labeling is reduced for the manufacturers by enabling them to comply with the labeling requirements of other Federal agencies through participation in CPILP.

[FR Doc. 78-5398 Filed 2-28-78; 8:45 am]

[4210-01]

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY

[Docket No. R-78-510]

PART 0—STANDARDS OF CONDUCT

AGENCY: Department of Housing and Urban Development—Office of the Secretary.

ACTION: Final rule.

SUMMARY: These amendments prohibit discrimination by employees against other employees of the Department because of race, color, religion, national origin, sex, or age. In addition, employees on official business are prevented from attending meetings which exclude persons for these reasons. The changes are needed to carry out statutory provisions and the requirements of Executive Order 11222.

EFFECTIVE DATE: March 1, 1978.

ADDRESS: Rules Docket Clerk, Department of Housing and Urban Development, Office of the General Counsel, Room 5218, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

John Waller, 202-755-6550.

SUPPLEMENTARY INFORMATION: Because these standards for prohibiting discrimination in the employment of personnel and the administration of HUD programs relate to agency management and personnel, notice and public procedure are unnecessary. In addition, good cause exists for making the changes effective upon publication in the FEDERAL REGISTER.

A finding of inapplicability regarding Environmental Impact has been prepared in accordance with the National Environmental Policy Act of 1969 and HUD Handbook 1390.1. A statement of inapplicability has also been prepared in accordance with Executive Order 11821 with respect to economic impact. Copies of these statements are available in the Rules Docket File which can be inspected and copied in the Office of the Rules Docket Clerk at the above address.

Accordingly, 24 CFR § 0.735-202 is amended by adding three new paragraphs which read as follows:

§ 0.735-202 Proscribed actions.

* * * * *

(g) Discrimination against any other employee, or applicant for employment, on the ground of race, color, religion, national origin, sex, or age;

(h) Excluding any person from participating in, or denying to any person the benefits of, any program or activity administered by the Department on the ground of race, color, religion, sex, or national origin; or

(i) While conducting official business, knowingly participating in or attending any segregated meetings, or meetings held in segregated facilities, from which persons are excluded because of race, color, religion, sex, or national origin.

(18 U.S.C. 201; E.O. 11222 of May 8, 1965, 30 FR 6469; 5 CFR 735.104.)

These amendments were approved by the Civil Service Commission on August 8, 1977.

Issued at Washington, D.C., February 21, 1978.

PATRICIA ROBERTS HARRIS,
Secretary, Housing and Urban Development.

[FR Doc. 78-5311 Filed 2-28-78; 8:45 am]

[4410-01]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 769-78]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart H—Antitrust Division

DELEGATION OF CERTAIN FUNCTIONS UNDER THE ENERGY POLICY AND CONSERVATION ACT

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order delegates to the Assistant Attorney General in charge of the Antitrust Division the authority to act on behalf of the Attorney General with respect to carrying out the provisions of sections 252 and 254 of the Energy Policy and Conservation Act, 42 U.S.C. 6272, 6274, and to voluntary agreements signed pursuant to section 252.

The amendment effected by this order will enable the Department of Justice to be responsive to problems arising under voluntary agreements and plans of action entered into or developed under section 252 of the Act.

EFFECTIVE DATE: February 20, 1978.

FOR FURTHER INFORMATION CONTACT:

John H. Shenefield, Assistant Attorney General, Antitrust Division, Department of Justice, Washington, D.C. 20530, 202-739-2401.

SUPPLEMENTARY INFORMATION: Section 252 of the Energy Policy and Conservation Act assigns to the Attorney General the responsibility of approving, reviewing and monitoring voluntary agreements and plans of action developed and executed by individuals and business entities in order to assist in the implementation of the Agreement on an International Energy Program, which was signed by the United States of America on November 18, 1974, and which, among other things, was entered into in order to create a vehicle to equitably allocate petroleum and petroleum products between signatory countries in the event of a shortage of petroleum in world markets and to develop information systems concerning international supplies of petroleum and petroleum products. Section 252(f) of the Energy Policy and Conservation Act, 42 U.S.C. 6272(f), makes available to any person a defense "to any civil or criminal action brought under the antitrust laws" that the person was acting pursuant to a voluntary agreement or plan of action authorized under section 252. Section 254 of the Energy Policy and Conservation Act authorizes the Secretary of the Department of Energy after consulting with the Attorney General to provide information and data related to the energy industry to the International Energy Agency, an international administrative body established under the International Energy Program.

The amendment effected by this Order will enable the Department of Justice to be responsive to problems arising under voluntary agreements and plans of action entered into or developed under section 252 of the Energy Policy and Conservation Act, 42 U.S.C. 6272, while maintaining its vigorous, continuing supervision of the development and execution of such voluntary agreements and plans of action, by delegating to the Assistant Attorney General in charge of the Antitrust Division responsibilities which involve the expertise of the Antitrust Division concerning competitive issues.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, section 0.41 of Subpart H of Part O of Chapter I of Title 28, Code of Federal Regulations, is amended by adding a new paragraph (i) at the end thereof, to read as follows:

§ 0.41 Special functions.

* * * * *

(i) Acting on behalf of the Attorney General with respect to sections 252 and 254 of the Energy Policy and Conservation Act, 42 U.S.C. 6272, 6274, including acting on behalf of the Attorney General with respect to voluntary agreements or plans of action established pursuant to section 252 of that Act.

Dated: February 20, 1978.

GRIFFIN B. BELL,
Attorney General.

[FR Doc. 78-5285 Filed 2-28-78; 8:45 am]

[3810-71]

Title 32—National Defense

CHAPTER VI—DEPARTMENT OF THE NAVY

SUBCHAPTER B—NAVIGATION

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

USS Cincinnati

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department is amending its rules for certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972, to reflect that the Secretary of the Navy has determined that USS *Cincinnati* (SSN 693) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners on waters where the 72 COLREGS apply.

EFFECTIVE DATE: February 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Lt. Comdr. M. D. Seiders, JAGC, USN, Admiralty Division, Office of the Judge Advocate General, Navy Department, Washington, D.C. 20370, 202-694-5188.

SUPPLEMENTARY INFORMATION: This amendment to Part 706 provides notice that the Secretary of the Navy has certified that USS *Cincinnati* (SSN 693) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c) regarding the arc of visibility and location of the stern light; annex I, section 2(a)(i) regarding the height of the masthead light; annex I, section 3(b) regarding the location of the sidelights; annex I, section 2(k) regarding the height of the anchor lights; and, rule 30(d)(i) regarding the display of two all round red lights when aground. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special function of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS *Cincinnati* (SSN 693) is a member of the SSN 688 class of ships for which certain exemptions, pursuant to 72 COLREGS Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS *Cincinnati*.

Since this amendment pertains to a military and foreign-affairs function of the United States, the rulemaking requirements of 5 U.S.C. 553 do not apply. Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. The third Table One of § 706.2 is amended by inserting the following between "USS *Omaha*, SSN-692 6.10" and "USS *George Washington*, SSBN-598 4.11":

Vessel	Number	Distance in meters of forward masthead light below minimum required height, § 2(a)(i), annex I
•	•	•
USS Cincinnati.	SSN-693	3.49
•	•	•

2. The fourth Table Three of § 706.2 is amended by inserting the following between "USS *Omaha* SSN-692 236° 115° 252° 4.2 6.1 2.0 1.6 below" and "USS *George Washington* SSBN-598 240° 118° 255° 3.8 46.0 2.1 0.6 below":

Vessel	Number	Masthead light, arc of visibility; rule 21(a)	Sidelights, arc of visibility; rule 21(b)	Stern light, arc of visibility; rule 21(c)	Sidelights, distance inboard of ship's sides in meters; sec. 3(b), annex I	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; sec. 2(K), annex I	Anchor lights, relationship of aft light to forward light in meters; sec. 2(K), annex I
•	•	•	•	•	•	•	•	•
USS *Cincinnati*	SSN-693	.....	.....	209°	4.3	6.1	3.4	1.6 below.
•	•	•	•	•	•	•	•	•

3. Note 3 of Table Four of § 706.2 is amended by revising the existing note to read as follows:

NOTE 3.—The second masthead light required by rule 23(a)(ii) and the lights required by rules 24, 27, and 30(d)(i) are not installed on submarines.

Effective date: The effective date of this amendment will be February 28, 1978.

Dated: February 16, 1978.

W. GRAHAM CLAYTOR, Jr.,
Secretary of the Navy.

[FR Doc. 78-5380 Filed 2-28-78; 8:45 am]

[3710-92]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

[ER 1130-2-324]

PART 209—ADMINISTRATIVE PROCEDURES

Coordination of Hydroelectric Power Operations With Power Marketing Agencies

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This regulation states the Corps of Engineers policies and procedures on coordination of hydroelectric power operations with the Federal Government power marketing agencies. The regulation is being issued in response to a recommendation contained within a Comptroller General of the United States Report to the Congress, dated January 2, 1976. This regulation will provide for more effective coordination of power operations between the Corps of Engineers and the Federal power marketing agencies.

EFFECTIVE DATE: March 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Kyle Jones, Construction-Operations Division, Civil Works Directorate, Office of the Chief of Engineers, Washington, D.C. 20314, 202-693-6975.

SUPPLEMENTARY INFORMATION: On June 7, 1977, the Corps of Engineers published a notice of proposed rule in the FEDERAL REGISTER, 42 FR 29025 (33 CFR 209-141), to establish policy and procedures for the coordination of hydroelectric power operations with power marketing agencies. Interested persons were invited to submit written comments, suggestions, or objections on or before July 15, 1977.

One comment was received. It was suggested that an operation rule curve based on lake elevation be developed for each reservoir. The curves are presently developed in accordance with the existing policy, therefore, inclusion in this regulation is not considered necessary.

To clarify the respective roles of the Corps and power marketing agencies, a second policy paragraph was added under section 209.141(e). The paragraph states that the Corps is responsible for operating the hydroelectric power projects and providing information affecting cost and power availability to the marketing agencies. Marketing the generated power declared excess to project needs and recovering Federal investment are the responsibilities of the marketing agencies. This new paragraph does not establish new policy but simply states existing policy.

Due to Executive Department reorganization, references to the Department of Interior have been deleted from the preamble. All references to marketing agencies are intended to refer to Federal agencies within the executive branch directly responsible for marketing power generated at Corps of Engineers multiple-purpose projects with power.

The Chief of Engineers has determined that this rule does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107 (statutory authority Pub. L. 90-483).

Dated: February 21, 1978.

JAMES N. ELLIS,
Colonel, Corps of Engineers,
Executive Director, Engineer Staff.

In consideration of the above Part 209 is amended by adding 209.141 as follows:

§ 209.141 Coordination of hydroelectric power operations with power marketing agencies.

(a) *Purpose.* This regulation establishes policies and procedures for coordinating the operation of the Corps of Engineers' hydroelectric generating facilities with the power marketing agencies.

(b) *Applicability.* This regulation applies to all civil works field operating agencies (FOA) having generating facilities producing marketable electric power.

(c) *References.* (1) Section 5, Pub. L. 534, 78th Congress, Flood Control Act of 1944, December 22, 1944 (58 Stat. 889).

(2) Section 302, Pub. L. 95-91, 95th Congress, Department of Energy Organization Act, August 4, 1977 (91 Stat. 565).

(d) *Background.* Section 5 of the Act of December 22, 1944 (Pub. L. 534, 78th Congress), provides that electric power and energy generated at reservoir projects under the control of the Department of the Army and in the opinion of the Secretary of Army not required in the operation of such projects shall be delivered to the Secretary of Interior for transmittal and disposal in a manner to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. Section 302 of the Department of Energy Organization Act (Pub. L. 95-91) transfers all functions of the Secretary of Interior under section 5 of the 1944 Act to the Secretary of Energy together with all other functions of the Secretary of Interior, and officers and components of the Department of the Interior, with respect to the Southeastern Power Administration; the Southwestern Power Administration; the Alaska Power Administration; the Bonneville Power Administation; and the power marketing functions of the Bureau of Reclamation.

(e) *Policies.* (1) The Corps is responsible for operating the hydroelectric power projects and providing information affecting cost and availability of power to the power marketing agencies. Marketing the generated power declared excess to the needs of the projects and recovering Federal investment are the responsibilities of the power marketing agencies.

(2) All FOA Commanders will develop, in coordination with their respective power marketing agency, a system for exchanging operating information. The system will include general operating information and information on conditions that could substantially affect costs or power availability.

(f) *Delegation.* Responsibility for coordinating the exchange of information may be delegated to the District Engineer at the discretion of the Division Engineer.

(g) *Procedures.* (1) Specific requirements.

(i) *Continuing.* Prompt written notification will be provided to the appropriate power marketing agency each time a change in power operations or conditions which could substantially affect costs or power availability is anticipated.

(ii) *Annual.* Annually, when no changes in power operations or costs are expected for the succeeding 12-month period, the marketing agency will be notified of that fact in writing.

(2) *FOA responsibility.* The FOA directly responsible for communicating with the marketing agency will develop appropriate reporting procedures in coordination with that agency.

[FR Doc. 78-5352 Filed 2-28-78; 8:45 am]

[8320-01]

Title 41—Public Contracts and Property Management

CHAPTER 8—VETERANS ADMINISTRATION

PART 8-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Architect-Engineer Evaluation Boards

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: This part is being revised to change the composition of the architect-engineer evaluation board appointed by the Assistant Administrator for Construction in order to increase the flexibility of that board.

EFFECTIVE DATE: February 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Clyde C. Cook, Supply Service, Veterans Administration, Washington, D.C. 20420, 202-389-2334.

SUPPLEMENTARY INFORMATION: Section 8-4.1004-1 is revised in order to permit representation on the architect-engineer evaluation board from any discipline considered necessary. This revision is intended to increase the efficiency of the architect-engineer evaluation by providing more flexibility in the composition of the board.

Since the change revises internal administrative matters, compliance with the provisions of 38 CFR 1.12 relating to regulatory development is considered unnecessary.

Approved: February 21, 1978.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

In § 8-4.1004-1, paragraph (a) is revised as follows:

§ 8-4.1004-1 Establishment of architect-engineer evaluation boards.

* * * * *

(a) The evaluation board will be chaired by either the Chairman or Vice Chairman of the Architect-Engineer Evaluation Board, or the project director will be designated to act when necessary. The board's members, as appointed by the Assistant Administrator for Construction, will include the appropriate project director or designated project supervisor and as many qualified professional architects or engineers from the Office of Construction technical services as may be considered appropriate for the particular project. Additional members from the Office of Construction Health Care Facilities Service or from other Veterans Administration departments and staff offices will be designated for special type projects when appropriate.

* * * * *

[FR Doc. 78-5388 Filed 2-28-78; 8:45 am]

[4110-35]

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Coverage and Reimbursement of Rural Health Clinic Services

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final regulation with comment period.

SUMMARY: These regulations set forth the conditions for coverage and reimbursement of rural health clinic serv- ices under the Medicare program. They implement some of the provisions of the Rural Health Clinic Services Act of 1977 (Pub. L. 95-210), which is effective for Medicare on March 1, 1978. The intent is to increase the availability of primary and emergency care services in rural areas that do not have enough physicians.

DATES: Effective March 1, 1978. Comments by March 31, 1978.

Notice of proposed rulemaking has been waived, in order to meet the statutory effective date. However, we will consider written comments, suggestions, or objections received within 30 days and will revise the regulations, if necessary. In commenting please refer to file code MAB 63 RC. Agencies and organizations are requested to submit comments in duplicate.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, Department of

Health, Education, and Welfare, P.O. Box 2372, Washington, D.C. 20013. Comments will be available for public inspection beginning approximately 2 weeks after publication, in Room 5225 of the Department's offices at 330 C Street SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m., 202-245-0950.

FOR FURTHER INFORMATION CONTACT:

Marinos Svolos, Medicare Bureau, HCFA, Room 106, East High Rise, 6401 Security Boulevard, Baltimore, Md. 21235, 301-594-9315.

SUPPLEMENTARY INFORMATION: The regulation implements the provisions of Pub. L. 95-210 dealing with the coverage and reimbursement of services furnished by rural health clinics under the Medicare program. It is effective for covered services furnished by a certified rural health clinic beginning March 1, 1978. Regulations setting forth the requirements a facility must meet to be certified as a rural health clinic were published in the FEDERAL REGISTER (43 FR 5373) on February 8, 1978. The provisions of Pub. L. 95-210 are effective for Medicaid covered services furnished by certified rural health clinics beginning July 1, 1978.

A notice of proposed rulemaking governing the coverage and reimbursement of rural health clinic serv- ices under medicaid will be published separately.

PURPOSE OF THE PROGRAM

Because of a lack of physicians, many areas of the country, particularly rural areas, have turned to specially-trained primary care practitioners to provide their health care needs. Many of these practitioners work in clinics under the general supervision of a physician and furnish a wide range of health care services many of which could previously only be reimbursed by Medicare if provided by a physician. These primary care practitioners are usually called physician assistants and nurse practitioners. The services nurse practitioners and physician assistants generally provide are primary care services under the supervision of a physician.

The use of nurse practitioners and physician assistants in an expanded role to provide primary care health services ordinarily provided by physicians has become more widespread in recent years. Until the enactment of Pub. L. 95-210, however, the Medicare law limited coverage of primary care services to those furnished by physicians, with only certain limited exceptions. Since the services provided by the nurse practitioners and physician assistants to Medicare beneficiaries were not generally eligible for Medicare reimbursement, these serv- ices were either paid for out-of-pocket by the beneficiary, supported through a grant, or treated by the clinic as bad debts or charity. As a result of these and other factors, several rural health clinics experienced serious financial problems. And, individuals who lived in such areas often did not have access to adequate health care services. Taking account of the severe health care problems resulting from the lack of physicians in many rural areas, Congress enacted Pub. L. 95-210 which amended the Medicare law to extend Medicare's coverage to permit reimbursement for services provided by qualified nurse practitioners and physician assistants in certified rural health clinics.

MAJOR REGULATION PROVISIONS

1. COVERAGE OF RURAL HEALTH CLINIC SERVICES

These regulations define the covered services furnished by a rural health clinic for which payment may be made by the Medicare program on behalf of its beneficiaries under Pub. L. 95-210. These include:

(1) Physicians' services including required physician supervisory services of nurse practitioners and physician assistants;

(2) Services and supplies furnished as an incident to a physician's professional services;

(3) Services of physician assistants, nurse practitioners, nurse midwives and specialized nurse practitioners;

(4) Services and supplies furnished as an incident to a nurse practitioner's or physician assistant's services; and

(5) Visiting nurse services on a part-time or intermittent basis to homebound patients (limited to areas in which there is a shortage of home health agencies).

Coverage of rural health clinic services is based largely on long-established Medicare coverage policy. For example, physicians services and services incident to a physician's services are defined in these regulations in accordance with the long-standing definitions of these terms. As contemplated under the law and congressional committee reports on Pub. L. 95-210, the regulations specify that covered services performed by a physician at the clinic are rural health clinic services which, accordingly, are reimbursable only to the clinic. Covered services performed by a physician outside the clinic are also covered rural health clinic services if the physician is compensated for the services by the clinic. If the physician is not so compensated, the covered services are reimbursable to the patient or the physician (if assignment is accepted) on the basis of reasonable charges. While the physician and clinic are free to choose the manner in which covered physicians' services outside the clinic will be paid for by Medicare, the Department expects that there will be a written agreement between the physician and clinic which reflects their decision on this matter. The Department also plans to closely monitor these situations to assure that no program abuse occurs.

The regulations provide that services furnished by nurse practitioners, physician assistants, nurse midwives and specialized nurse practitioners are covered, whether or not the clinic is under the full-time direction of a physician, if the individual is legally permitted under State law to perform such services and meets the education, training, and experience requirements set forth in the regulations. In defining services and supplies which are furnished incident to a nurse practitioner's or physician assistant's services in the clinic, the regulations adapt the requirements which must be met for services to be covered as incident to a physician's services. Essentially, the services and supplies must be of a type that:

(1) Would be covered if furnished as an incident to a physician's services;

(2) Is commonly furnished in physicians' offices; and

(3) Is commonly rendered without charge or included in the clinic's bill.

Such services and supplies must also be furnished as an incident to a nurse practitioner's or physician assistant's service. To be covered under this provision, services must be furnished by an employee of the clinic and under the direct supervision of a nurse practitioner, physician assistant, or physician.

The regulations also define Medicare's coverage of visiting nurse services furnished to homebound patients by rural health clinics that are located in areas where there is a shortage of home health agencies.

In such cases, part-time or intermittent nursing services provided by a registered nurse or licensed practical nurse are covered. Where possible, definitions have been used which are similar to the definitions used for comparable requirements under Medicare's home health benefit.

The regulations stipulate that the items and services a clinic offers which are not covered under the Medicare program are not eligible for Medicare reimbursement. These include, for example, routine dental services, and preventive services.

2. REIMBURSEMENT

Pub. L. 95-210 provides that Medicare payment for covered rural health clinic services will be "* * * 80 percent of costs which are reasonable and related to the cost of furnishing such services or on such other tests of reasonableness as the Secretary may pre-

scribe in regulations, including those authorized under section 1861(v)(1)(A) * * *." Clinics which are an integral part of a hospital will be paid in accordance with the reimbursement methods and principles used to pay for services furnished in a hospital. To implement this provision for those clinics which are not part of a hospital (independent clinics), the Department will initially use an all-inclusive rate method of payment designed to pay for Medicare's share of actual costs, to the extent that they are reasonable.

The Department's objectives in selecting the initial payment method for independent rural health clinics have been:

(1) To provide an equitable level of payment;

(2) To avoid imposing undue data collection, reporting or other administrative burdens on the clinic; and

(3) To permit the Health Care Financing Administration to administer the benefit in a way that does not impede clinic operation.

It is the Department's intent to phase out the initial payment method beginning in March 1979, and to replace it with a prospective method of payment that provides incentives for efficient operation.

All-Inclusive Rate of Payment

The regulations describe the all-inclusive rate method of payment to be used initially. This method of payment requires a clinic to submit, at the beginning of its reporting year, a budget forecast of costs and anticipated visits. Based upon the clinic's estimates the Medicare fiscal intermediary (called "carrier" in the regulations) determines an all-inclusive rate per visit for the clinic by dividing the total allowable expenses by the total anticipated clinic and home visits. Eighty percent of this rate, after subtracting the amount of any deductible for which the Medicare patient is responsible, is paid to the clinic when a Medicare patient is furnished a covered service by a clinic physician, physician assistant, nurse practitioner, nurse midwide, specialized nurse practitioner, or visiting nurse.

Adjustment of Payment

The regulations require that during each reporting period the fiscal intermediary will periodically review and adjust the all-inclusive rate, if necessary, to bring current payments into agreement with current expenses. Such revisions will also be performed if requested by the clinic. At the end of the reporting period (usually 1 year), there will be a reconciliation adjustment based on a report submitted by the clinic of its actual costs and visits for the period. Principally, using this information, the fiscal intermediary will determine the amount of payment due the clinic for covered services furnished Mediare patients. Any difference between the total payment due the clinic and the total payments for services furnished made during the reporting period is to be paid as follows:

(1) If the clinic has been under paid, the fiscal intermediary will make a lump-sum payment for the amount due.

(2) If the clinic has been over paid, the intermediary will arrange a repayment plan which generally seeks to recover the money due in a period not to exceed 1 year. A longer repayment period may be permitted if the intermediary is satisfied that unusual circumstances exist, e.g., to avoid severe financial hardship on the clinic.

Allowable Cost

The regulations define allowable cost for rural health clinics to include those costs which are reasonable in amount and necessary for the efficient delivery of rural health clinic services. These expenses include reasonable compensation for the services of physicians, physician assistants, nurse practitioners and other health care personnel, purchased services to the extent reasonable, and reasonable overhead costs related to the covered services, including depreciation costs. In determining whether specific expenses are allowable, the regulations stipulate that the principles of reinbursement for provider costs (Subpart D of the Medicare Regulations, 42 CFR, Part 405) will be followed. Thus, for example, reasonable amounts attributable to uncollected deductibles and coinsurance for which the clinic charges and makes reasonable efforts to collect will be recognized as part of the reconciliation process.

Tests of Reasonableness

Under the regulations, allowable costs of a rural health clinic are subject to tests of reasonableness developed by HCFA and the carrier. In part, these tests include guidelines which are intended to identify situations where costs will not be allowable without further justification by the clinic. These guidelines may include, but are not limited to, minimum productivity standards for physicians, physician assistants, nurse practitioners, nurse midwives, specialized nurse practitioners and visiting nurses, and guidelines to assess the reasonableness of levels of administrative expense. Additionally, the tests may include limits established based on costs estimated to be reasonable for the provision of clinic services. Such limits may be established with respect to total direct or indirect costs, or costs of specific items or groups of items or services.

Limits will be designed to assure that program payment is reasonable as required by the law. The limit will take into account the frequency and range of services furnished by the clinic and the amounts paid by the Medicare program for comparable services under other provisions of the law.

Reporting Requirements

It is the Department's intention to make reporting requirements as simple as possible so that all qualified rural health clinics will be able to comply with them. For the most part, reports will consist of a relatively simple list of board categories of expenses, such as salaries, purchased services, and administrative expenses, and basic data on clinic utilization. Rural health clinics will not be asked to submit extensive reports, such as those required of hospitals.

Future Reimbursement Method

Payment on the basis of the all-inclusive rate per visit (described above) will provide the experience and data the Department needs to develop a prospective payment method intended to provide incentives for efficient operation. The Department encourages suggestions for a prospective reimbuse approach, particularly as to the basis of payment, how the payment should be determined, and how incentives can be provided to encourage cost effective and efficient operations. After consideration of the various alternative approaches, the Department intends to publish a notice of proposed rulemaking followed by final regulations. Our current plan is to publish a notice of proposed rulemaking by October 1978, with final rules published and in effect by March 1979. In no event will the initial payment method be used for reporting periods beginning after March 1, 1980.

Administration

The Department intends to have Medicare fiscal intermediaries determine clinic payment rates and to adjudicate claims for services furnished by rural health clinics. (Since these intermediaries will be administering this new benefit under Part B of the Medicare program, they are referred to in these regulations as carriers with respect to their duties under the rural health clinic benefit.) Initially, there will be five intermediaries, each handling a multi-state region. The Department further intends to encourage States to utilize the same organizations to administer the rural health clinic benefit under the Medicaid program.

Other Provisions

The regulations also address such matters as the agreement the clinic is required to file with the Secretary,

suspensions, terminations and appeals. Under the agreement the clinic files with the Secretary, the clinic agrees to not charge Medicare beneficiaries for covered services except for any unmet deductible amounts and for coinsurance. the clinic also agrees to refund to beneficiaries as promptly as possible any amounts incorrectly collected from them.

The Department recognizes that there may be a heavy initial workload on the State agencies responsible for certifying rural health clinics and that, as a result, delays may occur in processing clinic requests for certification. Therefore, the Secretary intends to take this into consideration in establishing the effective date of his agreement with the clinic in order to assure that Medicare beneficiaries are not disadvantaged by such delays. Thus for example, if a clinic submits its application to the State agency prior to March 1, 1978, but the process for certifying the clinic and completing the agreement forms is not accomplished until the end of March, the Secretary will make that agreement effective as of March 1, 1978.

The procedures for appeals include appeals on the part of facilities with respect to whether they qualify as rural health clinics under the Medicare program, appeals by facilities as to the amount of reimbursement due them, and appeals by beneficiaries. Certain minor amendments to Subpart B are also included in this amendment. Minor revisions to other subparts of Part 405 will be published very soon to conform them to changes in Medicare's coverage provisions as a result of the enactment of Pub. L. 95-210.

WAVIER OF PROPOSED RULEMAKING

The statute (Pub. L. 95-210) provides that Medicare reimbursement is available beginning March 1, 1978. Moreover, the legislative history contains numerous references to the urgent need for timely implementation of the statute. Therefore, the Secretary has determined that there is good cause to waive Notice of Proposed Rulemaking prior to issuing this regulation and to make it effective March 1, 1978.

Although rulemaking has been waived, public comments and recommendations on the regulations are invited and will be evaluated with a view towards possible revision. On January 17, 1978, the Department published a notice in the FEDERAL REGISTER (43 FR 2412) stating that drafts of the regulations would be available upon request. All comments from interested parties have been considered in preparing this regulation.

42 CFR Part 405 is amended as follows:

1. Section 405.231 is amended by adding a new paragraph (n) as follows:

§ 405.231 Medical and other health services; included items and services.

* * * * *

(n) Rural health clinic services as specified in Subpart X of this part.

2. Section 405.240 is amended by adding a new paragraph (f) as follows:

§ 405.240 Payment of supplementary medical insurance benefits; amounts payable.

* * * * *

(f) Eighty percent of the costs payable under Subpart X of this part, which are reasonable and related to the cost of furnishing rural health clinic services or which are based on other tests of reasonableness as specified by the Secretary.

3. Subpart B of this part is amended by redesignating § 405.250a as § 405.250-1 and adding a new § 405.250-2 as follows:

§ 405.250-1 Outpatient physical therapy and speech pathology services furnished by participating provider; plan of treatment requirements.

* * * * *

§ 405.250-2 Procedures for payment; rural health clinic services furnished by a rural health clinic.

Payment for covered rural health clinic services shall be made if:

(a) The services are furnished in accordance with the requirements of Subpart X of this part and Subpart A of part 481 of this chapter; and

(b) A written request for payment is filed by the clinic on the form and in the manner prescribed by the Secretary.

4. 42 CFR Part 405 is amended by adding a new Subpart X to read as follows:

Subpart X-Rural Health Clinic Services

Sec.
405.2401 Scope and definitions.
405.2402 Basic requirements.
405.2403 Content and terms of the agreement with the Secretary.
405.2404 Terminations of agreements.
405.2410 Beneficiary entitlement and liability.
405.2411 Scope of benefits.
405.2412 Physicians' services.
405.2413 Services and supplies incident to a physician's services.
405.2414 Nurse practitioner and physician assistant services.
405.2415 Services and supplies incident to nurse practitioner and physician assistant services.
405.2416 Visiting nurse services.
405.2417 Visiting nurse services: Determination of shortage of home health agencies.
405.2418 Applicability of general payment exclusions.
405.2425 Payment for rural health clinic services.
405.2426 All-inclusive rate.
405.2427 Annual reconciliation.
405.2428 Allowable costs.
405.2429 Reports and maintenance of records.
405.2430 Beneficiary appeals.

AUTHORITY: Sec. 1102, 1833, 1861(aa), 1871, Social Security Act; 49 Stat. 647, 79 Stat. 302, 322, and 331, 91 Stat. 1485; 42 U.S.C. 1302, 13951, 1395hh, and 1395x(aa).

§ 405.2401 Scope and definitions.

(a) *Scope.* This subpart establishes the requirements for coverage and reimbursement of rural health clinic services under Medicare.

(b) *Definitions.* As used in this subpart, unless the context indicates other- wise:

(1) "Act" means the Social Security Act.

(2) "Allowable costs" means costs that are incurred by a clinic and are reasonable in amount and proper and necessary for the efficient delivery of rural health clinic services.

(3) "Beneficiary" means an individual enrolled in the Supplementary Medical Insurance program for the Aged and Disabled (Part B of title XVIII of the Act).

(4) "Coinsurance" means that portion of the clinic's charge for covered services for which the beneficiary is liable in addition to the deductible.

(5) "Carrier" means an organization that has a contract with the Secretary to administer the benefits covered by this subpart.

(6) "Covered services" means items or services for which the beneficiary is entitled to have payment made on his or her behalf under this subpart.

(7) "Deductible" means: (i) The first $60 of expenses incurred by the beneficiary during any calendar year for items and services covered under Part B of title XVIII; and

(ii) The expenses incurred for the first 3 pints of blood or 3 units of packed red blood cells furnished to a beneficiary during any calendar year. (See sections 405.245 and 405.246 for greater detail.)

(8) "HCFA" stands for Health Care Financing Administration.

(9) "Intermittent nursing care" means a medically predictable need for nursing care from time to time, but usually not less frequently than once every 60 days.

(10) "Nurse-midwife" means a registered professional nurse who is currently licensed to practice in the State, who meets applicable State requirements governing nurse midwives, and who meets one of the following conditions:

(i) Is currently certified as a Nurse Midwife by the American College of Nurse Midwives; or

(ii) Has satisfactorily completed a formal educational program (of at least one academic year) that:

(A) Prepares registered nurses to furnish care to essentially normal

newborns and women antepartally, intrapartally, postpartally and/or gynecologically;

(B) Upon completion, qualifies the nurse to take the certification examination offered by the American College of Nurse Midwives;

(C) Includes at least 4 months (in the aggregate) of classroom instruction and a component of supervised clinical practice; and

(D) Awards a degree, diploma, or certificate to persons who successfully complete the program; or

(iii) Has successfully completed a formal educational program that does not meet the requirements of paragraph (b)(10)(ii) of this section, and has been practicing as a nurse midwife for a total of 12 months during the 18-month period immediately preceding the effective date of the regulations governing certification of rural health clinics (February 8, 1978).

(11) "Nurse practitioner" and "physician assistant" mean individuals who meet the applicable education, training experience and other requirements of § 481.2 of this chapter.

(12) "Part-time nursing care" means nursing care that is required on less than a full-time basis, that is, less than 8 hours a day or 40 hours a week.

(13) "Physician" means: (i) A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the function is performed; and

(ii) Within limitations as to the specific services furnished, a doctor of dentistry or dental or oral surgery, a doctor of optometry, a doctor of podiatry or surgical chiropody or a chiropractor. (See section 1861(r) of the Act and § 405.232a of this part for specific limitations).

(14) "Reporting period" means a period of 12 consecutive months specified by the carrier as the period for which a clinic must report its costs and utilization. The first and last reporting periods may be less than 12 months.

(15) "Rural health clinic" means a facility that: (i) Has been determined by the Secretary to meet the requirements of section 1861(aa)(2) of the Act and Part 481 of this chapter; and

(ii) Has filed an agreement with the Secretary in order to provide rural health clinic services under Medicare. (See § 405.2402.)

(16) "Secretary" means the Secretary of Health, Education, and Welfare or his delegate.

(17) "Specialized nurse-practitioner" means a registered professional nurse who is currently licensed to practice in the State, who meets the State's requirements governing the qualifications of nurse practitioners, and who meets one of the following conditions:

(i) Is currently certified as a nurse practitioner by the American Nurses' Association to perform specialized primary health care services; or

(ii) Has satisfactorily completed a formal educational program (of at least one academic year) that:

(A) Prepares registered nurses to perform an expanded role in the delivery of specialized primary health care services;

(B) Includes at least 4 months (in the aggregate) of classroom instruction and a component of supervised clinical practice; and

(C) Awards a degree, diploma, or certificate to persons who successfully complete the program, or

(iii) Has successfully completed a formal educational program that does not meet the requirements of paragraph (17)(ii) of this section, and has been performing an expanded role in the delivery of specialized primary health care services for a total of 12 months during the 18-month period immediately preceding the effective date of the regulations governing certification of rural health clinics (February 8, 1978).

(18) "Visit" means a face-to-face encounter between a clinic patient and a physician, physician assistant, nurse practitioner, nurse midwife, specialized nurse practitioner, or visiting nurse. Encounters with more than one health professional, and multiple encounters with the same health professional, which take place on the same day and at a single location constitute a single visit, except for cases in which the patient, subsequent to the first encounter, suffers illness or injury requiring additional diagnosis or treatment.

(19) "Visiting nurse services" means part-time or intermittent nursing care and related medical supplies (other than drugs or biologicals) furnished by a registered nurse or licensed practical nurse to a homebound patient.

§ 405.2402 Basic requirements.

(a) *Certification by the State survey agency.*—The rural health clinic must be certified in accordance with Part 481 of this chapter.

(b) *Acceptance of the clinic as qualified to furnish rural health clinic services.*—If the Secretary, after reviewing the survey agency recommendation and other evidence relating to the qualifications of the rural health clinic, determines that it meets the requirements of this subpart and of Part 481 of this chapter, he will send the clinic:

(1) Written notice of the determination; and

(2) Two copies of the agreement to be filed as required by section 1861(aa)(1) of the Act.

(c) *Filing of agreement by the rural health clinic.*—If the rural health clinic wishes to participate in the program, it must:

(1) Have both copies of the agreement signed by an authorized representative; and

(2) File them with the Secretary.

(d) *Acceptance by the Secretary.*—If the Secretary accepts the agreement filed by the rural health clinic, he will return to the clinic one copy of the agreement, with a notice of acceptance specifying the effective date.

(e) *Duration of agreement.*—The agreement shall be for a term of one year and may be renewed annually by mutual consent of the Secretary and the rural health clinic.

(f) *Appeal rights.*—If the Secretary does not certify a rural health clinic, or refuses to enter into or renew an agreement, the facility is entitled to a hearing in accordance with Subpart O of this part.

§ 405.2403 Content and terms of the agreement with the Secretary.

(a) Under the agreement, the rural health clinic agrees to the following:

(1) *Maintaining compliance with conditions.*—The clinic agrees to maintain compliance with the conditions set forth in Part 481 of this chapter and to report promptly to HCFA any failure to do so.

(2) *Charges to beneficiaries.*—The clinic agrees not to charge the beneficiary or any other person for items and services for which the beneficiary is entitled to have payment made under the provisions of this part (or for which the beneficiary would have been entitled if the rural health clinic had filed a request for payment in accordance with § 405.250-2), except for any deductible or coinsurance amounts for which the beneficiary is liable under § 405.2410.

(3) *Refunds to beneficiaries.*—(i) The clinic agrees to refund as promptly as possible any money incorrectly collected from beneficiaries or from someone on their behalf.

(ii) As used in this section, "money incorrectly collected" means sums collected in excess of the amount for which the beneficiary was liable under § 405.2410. It includes amounts collected at a time when the beneficiary was believed not to be entitled to Medicare benefits but:

(A) The beneficiary is later determined to have been entitled to Medicare benefits; and

(B) The beneficiary's entitlement period falls within the time the rural health clinic's agreement with the Secretary is in effect.

(4) *Beneficiary treatment.*—(i) The clinic agrees to accept beneficiaries for care and treatment; and

(ii) The clinic agrees not to impose any limitations on the acceptance of beneficiaries for care and treatment that it does not impose on all other persons.

(b) *Additional provisions.*—The agreement may contain any additional

provisions that the Secretary finds necessary or desirable for the efficient and effective administration of the Medicare program.

§ 405.2404 Terminations of agreements.

(a) *Termination by rural health clinic.*—(1) *Notice to Secretary.* If the clinic wishes to terminate its agreement it shall file with the Secretary a written notice stating the intended effective date of termination.

(2) *Action by the Secretary.*—(i) The Secretary may approve the date proposed by the clinic, or set a different date no later than 6 months after the date of the clinic's notice.

(ii) The Secretary may approve a date which is less than 6 months after the date of notice if he determines that termination on that date would not:

(A) Unduly disrupt the furnishing of services to the community serviced by the clinic; or

(B) Otherwise interfere with the effective and efficient administration of the Medicare program.

(3) *Cessation of business.* If a clinic ceases to furnish services to the community, that shall be deemed to be a voluntary termination of the agreement by the clinic, effective on the last day of business.

(b) *Termination by the Secretary.*—(1) *Cause for termination.* The Secretary may terminate an agreement if he determines that the rural health clinic:

(i) No longer meets the conditions for certification under Part 481 of this chapter; or

(ii) Is not in substantial compliance with the provisions of the agreement, the requirements of this subpart, any other applicable regulations of this part, or any applicable provisions of title XVIII of the Act; or

(iii) Has undergone a change of ownership.

(2) *Notice of termination.* The Secretary will give notice of termination to the rural health clinic at least 15 days before the effective date stated in the notice.

(3) *Appeal by the rural health clinic.* A rural health clinic may appeal the termination of its agreement in accordance with the provisions set forth in Subpart O of this part.

(c) *Effect of termination.* Payment will not be available for rural health clinic services furnished on or after the effective date of termination.

(d) *Notice to the public.* Prompt notice of the date and effect of termination shall be given to the public, through publication in local newspapers:

(1) By the clinic, after the Secretary has approved or set a termination date; or

(2) By the Secretary, when he has terminated the agreement.

(e) *Conditions for reinstatement after termination of agreement by the Secretary.* When an agreement with a rural health clinic is terminated by the Secretary, the rural health clinic nay not file another agreement to participate in the Medicare program unless the Secretary:

(1) Finds that the reason for the termination of the prior agreement has been removed; and

(2) Is assured that the reason for the termination will not recur.

§ 405.2410 Beneficiary entitlement and liability.

(a) *Entitlement.* A beneficiary is entitled to have payment made on his or her behalf for rural health clinic services in accordance with this subpart.

(b) *Liability.* (1) The beneficiary's entitlement to payment begins only after the beneficiary has incurred the deductible;

(2) The beneficiary is responsible, in addition, for a coinsurance amount which cannot exceed 20 percent of the clinic's reasonable customary charge for the covered service; and

(3) The beneficiary's deductible and coinsurance liability, with respect to any one item or service furnished by the clinic, may not exceed a reasonable amount customarily charged by the clinic for that particular item or service.

§ 405.2411 Scope of benefits.

(a) Rural health clinic services reimbursable under this subpart are:

(1) The physicians' services specified in § 405.2412;

(2) Services and supplies furnished as an incident to a physician's professional service;

(3) The nurse practitioner or physician assistant services specified in § 405.2414;

(4) Services and supplies furnished as an incident to a nurse practitioner's or physician assistant's services; and

(5) Visiting nurse services.

(b) Rural health clinic services are reimbursable when furnished to a patient at the clinic, at a hospital or other medical facility, or at the patient's place of residence.

§ 405.2412 Physicians' services.

(a) Physicians' services are professional services that are performed by a physician at the clinic or are performed away from the clinic by a physician whose agreement with the clinic provides that he or she will be paid by the clinic for such services.

§ 405.2413 Services and supplies incident to a physician's services.

(a) Services and supplies incident to a physician's professional service are reimbursable under this subpart if the service or supply is:

(1) Of a type commonly furnished in physicians' offices;

(2) Of a type commonly rendered either without charge or included in the rural health clinic's bill;

(3) Furnished as an incidental, although integral, part of a physician's professional services;

(4) Furnished under the direct, personal supervision of a physician; and

(5) In the case of a service, furnished by a member of the clinic's health care staff who is an employee of the clinic.

(b) Only drugs and biologicals which cannot be self-administered are included within the scope of this benefit.

§ 405.2414 Nurse practitioner and physician assistant services.

(a) Professional services are reimbursable under this subpart if:

(1) Furnished by a nurse practitioner, physician assistant, nurse midwife, or specialized nurse practitioner who is employed by, or receives compensation from, the rural health clinic;

(2) Furnished under the medical supervision of a physician;

(3) Furnished in accordance with any medical orders for the care and treatment of a patient prepared by a physician;

(4) They are of a type which the nurse practitioner, physician assistant, nurse midwife or specialized nurse practitioner who furnished the service is legally permitted to perform by the State in which the service is rendered; and

(5) They would be covered if furnished by a physician.

(b) The physician supervision requirement is met if the conditions specified in § 481.8(b) of this chapter and any pertinent requirements of State law are satisfied.

(c) The services of nurse practitioners, physician assistants, nurse midwives or specialized nurse practitioners are not covered if State law or regulations require that the services be performed under a physician's order and no such order was prepared.

§ 405.2415 Services and supplies incident to nurse practitioner and physician assistant services.

(a) Services and supplies incident to a nurse practitioner's or physician assistant's services are reimbursable under this subpart if the service or supply is:

(1) Of a type commonly furnished in physicians' offices;

(2) Of a type commonly rendered either without charge or included in the rural health clinic's bill;

(3) Furnished as an incidental, although integral part of professional services furnished by a nurse practitioner, physician assistant, nurse midwife, or specialized nurse practitioner;

(4) Furnished under the direct, personal supervision of a nurse practitioner, physician assistant, nurse midwife, specialized nurse practitioner or a physician; and

(5) In the case of a service, furnished by a member of the clinic's health care staff who is an employee of the clinic.

(b) The direct personal supervision requirement is met in the case of a nurse practitioner, physician assistant, nurse midwife, or specialized nurse practitioner only if such a person is permitted to supervise such services under the written policies governing the rural health clinic.

(c) Only drugs and biologicals which cannot be self-administered are included within the scope of this benefit.

§ 405.2416 Visiting nurse services.

(a) Visiting nurse services are covered if:

(1) The rural health clinic is located in an area in which the Secretary has determined that there is a shortage of home health agencies;

(2) The services are rendered to a homebound individual;

(3) The services are furnished by a registered nurse, licensed practical nurse, or licensed vocational nurse who is employed by, or receives compensation for the services from the clinic; and

(4) The services are furnished under a written plan of treatment that is:

(i) Established and reviewed at least every 60 days by a supervising physician of the rural health clinic or established by a nurse practitioner, physician assistant, nurse midwife, or specialized nurse practitioner and reviewed at least every 60 days by a supervising physician; and

(ii) Signed by the nurse practitioner, physician assistant, nurse midwife, specialized nurse practitioner, or the supervising physician of the clinic.

(b) The nursing care covered by this section includes:

(1) Services that must be performed by a registered nurse, licensed practical nurse, or licensed vocational nurse if the safety of the patient is to be assured and the medically desired results achieved; and

(2) Personal care services, to the extent covered under Medicare as home health services. These services include helping the patient to bathe, to get in and out of bed, to exercise and to take medications.

(c) This benefit does not cover household and housekeeping services or other services that would constitute custodial care.

(d) For purposes of this section, "homebound" means an individual who is permanently or temporarily confined to his or her place of residence because of a medical or health condition. The individual may be considered homebound if he or she leaves the place of residence infrequently. For this purpose, "place of residence" does not include a hospital or long term care facility.

§ 405.2417 Visiting nurse services: Determination of shortage of agencies.

A shortage of home health agencies exists if the Secretary determines that the rural health clinic:

(a) Is located in a county, parish, or similar geographic area in which there is no participating home health agency or adequate home health services are not available to patients of the rural health clinic;

(b) Has (or expects to have) patients whose permanent residences are not within the area serviced by a participating home health agency; or

(c) Has (or expects to have) patients whose permanent residences are not within a reasonable traveling distance, based on climate and terrain, of a participating home health agency.

§ 405.2418 Applicability of general payment exclusions.

The payment conditions, limitations, and exclusions set out in Subpart C and §§ 405.232, 405.243 and 405.252 of this part are applicable to payment for services provided by rural health clinics.

§ 405.2425 Payment for rural health clinic services.

(a) *Payment to provider clinics.* A clinic will be paid in accordance with Subpart D of this part if:

(1) The clinic is an integral and subordinate part of a hospital, skilled nursing facility or home health agency participating in Medicare (i.e., a provider of services); and

(2) The clinic is operated with other departments of the provider under common licensure, governance and professional supervision.

(b) *Payment to independent clinics.* (1) All other clinics will be paid on the basis of an all-inclusive rate for each beneficiary visit for covered services. This rate will be determined by the carrier, in accordance with this subpart and general instructions issued by HCFA.

(2) The amount payable by the carrier for a visit will be determined as follows:

(i) If the deductible has been fully incurred by the beneficiary prior to the visit, 80 percent of the all-inclusive rate will be paid.

(ii) If the deductible has not been fully incurred by the beneficiary prior to the visit, payment will be made to the clinic only if the clinic's reasonable customary charge for the services furnished exceeds the amount necessary to satisfy the beneficiary's deductible. The amount necessary to satisfy the deductible will be subtracted from the all-inclusive rate, and 80 percent of the remainder, if any, will be paid to the clinic.

(3) In order to receive payment, the payment procedures established in accordance with § 405.250-2 shall be followed.

(4) This method of payment shall terminate with reporting periods that begin after March 1, 1980.

§ 405.2426 All-inclusive rate.

(a) *Determination of rate.* (1) An all-inclusive rate will be determined by the carrier at the beginning of the reporting period.

(2) The rate will be determined by dividing the estimated total allowable costs by estimated total visits for rural health clinic services.

(3) The rate determination will be subject to any tests of reasonableness that may be established in accordance with this subpart.

(b) *Adjustment of rate.* (1) The carrier will, during each reporting period, periodically review the rate to assure that payments approximate actual allowable costs and visits for rural health clinic services, and will adjust it if:

(i) There is a significant change in the utilization of clinic services;

(ii) Actual allowable costs vary materially from the clinic's estimated allowable costs; or

(iii) Other circumstances arise which warrant an adjustment.

(2) The clinic may request the carrier to review the rate to determine whether adjustment is required.

§ 405.2427 Annual reconciliation.

(a) *General.* Payments made to a rural health clinic during a reporting period will be subject to reconciliation to assure that those payments do not exceed or fall short of the allowable costs attributable to covered services furnished to Medicare beneficiaries during that period.

(b) *Calculation of reconciliation.* (1) The carrier will determine the total reimbursement amount due the clinic on the basis of;

(i) The report specified in § 405.2429(c)(2); and

(ii) The rate determined by dividing the total allowable costs incurred for the reporting period by total visits for rural health clinic services furnished for the period. The rate will be subject to tests of reasonableness which may be established in accordance with this subpart.

(2) The total reimbursement amount due shall be compared with total payments made to the clinic for the reporting period, and the difference shall constitute the amount of the reconciliation.

(c) *Notice of program reimbursement.*—The carrier will send written notice to the clinic:

(1) Setting forth its determination of the total reimbursement amount due the clinic for the reporting period and the amount, if any, of the reconciliation; and

(2) Informing the clinic of its right to have the determination reviewed at

a hearing under the procedures set forth in Subpart R of this part, if the amount in controversy is at least $1,000.

(d) *Payment of reconciliation amount.* (1) *Underpayments.* If the total reimbursement due the clinic exceeds the payments made for the reporting period, the carrier will make a lump-sum payment to the clinic to bring total payments into agreement with total reimbursement due the clinic.

(2) *Overpayments.* If the total payments made to a clinic for the reporting period exceed the total reimbursement due the clinic for the period, the carrier will arrange with the clinic for repayment through a lump-sum refund, or, if that poses a hardship for the clinic, through offset against subsequent payments or a combination of offset and partial refund. The repayment shall be completed as quickly as possible, generally within 12 months from the date of the notice of program reimbursement. A longer repayment period may be agreed to by the carrier if the carrier is satisfied that unusual circumstances exist which warrant a longer period.

§ 405.2428 Allowable costs.

(a) *Applicability of general Medicare principles.* In determining whether a specific type or item of cost is allowable, such as interest, depreciation, bad debts and owner compensation, the principles for reimbursement of provider costs, as set forth in Subpart D of this part, will be followed as applicable.

(b) *Typical rural health clinic costs.* The following types and items of cost will be included in allowable costs to the extent that they are reasonable:

(1) Compensation for the services of physicians, physician assistants, nurse practitioners, nurse midwives, specialized nurse practitioners and visiting nurses employed by the clinic.

(2) Compensation for the duties that a supervising physician is required to perform under the agreement specified in § 481.8 of this chapter.

(3) Costs of services and supplies incident to the services of a physician, physician assistant, nurse practitioner, nurse midwife or specialized nurse practitioner.

(4) Overhead costs, including clinic adminstration, costs applicable to use and maintenance of the clinic facility, and depreciation costs.

(5) Costs of services purchased by the clinic.

(c) *Tests of reasonableness for rural health clinic cost and utilization.* Tests of reasonableness authorized by sections 1833(a) and 1861(v)(1)(A) of the Act may be established by HCFA or the carrier with respect to direct or indirect overall costs, costs of specific items and services, or costs of groups of items and services. Those tests include, but are not limited to, screening guidelines and payment limitations.

(d) *Screening guidelines.*—(1) Costs in excess of amounts established by the guidelines will not be included unless the clinic provides reasonable justification satisfactory to the carrier.

(2) Screening guidelines will be used to assess:

(i) Compensation for the professional and supervisory services of physicians and for the services of physician assistants, nurse practitioners, nurse midwives and specialized nurse practitioners;

(ii)Physician, physician assistant, nurse practitioner, specialized nurse practitioner, nurse midwife, and visiting nurse productivity;

(iii) The level of admininstrative and general expenses;

(iv) Staffing (e.g., the ratio of other clinic personnel to physicians, physician assistants, and nurse practitioners); and

(v) The reasonableness of payments for services purchased by the clinic, subject to the limitation that the costs of physicians' services purchased by the clinic may not exceed the reasonable charges for these services as determined under Subpart E of this part.

(e) *Payment limitations.* Limits on payments may be set by HCFA, on the basis of costs estimated to be reasonable for the provision of such services.

§ 405.2429 Reports and maintenance of records.

(a) *Maintenance and availability of records.* The rural health clinic shall:

(1) Maintain adequate financial and statistical records, in the form and containing the data required by HCFA, to allow the carrier to determine payment for covered services furnished to Medicare beneficiaries in accordance with this subpart.

(2) Make the records available for verification and audit by HEW or the General Accounting Office;

(3) Maintain financial data on an accrual basis, unless it is part of a governmental institution that uses a cash basis of accounting. In the latter case, appropriate depreciation on capital assets will be allowable rather than the expenditure for the capital asset.

(b) *Adequacy of records.*—(1) The carrier may suspend reimbursement if it determines that the clinic does not maintain records that provide an adequate basis to determine payments under Medicare.

(2) The suspension will continue until the clinic demonstrates to the carrier's satisfaction that it does, and will continue to, maintain adequate rec- ords.

(c) *Reporting requirements.*—(1) *Initial report.* At the beginning of its initial reporting period, the clinic shall submit an estimate of budgeted costs and visits for rural health clinic services for the reporting period, in the form and detail required by HCFA, and such other information as HCFA may require to establish the payment rate.

(2) *Annual reports.* Within 90 days after the end of its reporting period, the clinic shall submit, in such form and detail as may be required by HCFA, a report of:

(i) Its operations, including the allowable costs actually incurred for the period and the actual number of visits for rural health clinic services furnished during the period; and

(ii) The estimated costs and visits for rural health clinic services for the succeeding reporting period, and such other information as HCFA may require to establish the payment rate.

(3) *Late reports.* If the clinic does not submit an adequate annual report on time, the carrier may reduce or suspend payments to preclude excess payment to the clinic.

(4) *Inadequate reports.* If the clinic does not furnish a report or furnishes a report that is inadequate for the carrier to make a determination of program payment, HCFA may deem all payments for the reporting period to be overpayments.

(5) *Postponement of due date.* For good cause shown by the clinic, the carrier may, with HCFA's approval, grant a 30-day postponement of the due date for the annual report.

(6) *Termination of agreement or change of ownership.* The report from a clinic which voluntarily or involuntarily ceases to participate in the Medicare program or experiences a change in ownership is due no later than 45 days following the effective date of the termination of agreement or change of ownership.

§ 405.2430 Beneficiary appeals.

A beneficiary may request a hearing by a carrier (subject to the limitations and conditions set forth in Subpart H of this part) if:

(a) The beneficiary is dissatisfied with a carrier's determination denying a request for payment made on his or her behalf by a rural health clinic; or

(b) The beneficiary is dissatisfied with the amount of payment; or

(c) The beneficiary believes the request for payment is not being acted upon with reasonable promptness.

(Sec. 1102, 1833, 1861(aa), 1871, Social Security Act; 49 Stat. 647, 79 Stat. 302, 322, and 331, 91 Stat. 1485; 42 U.S.C. 1302, 1395l, 1395hh, and 1395x(aa).)

(Catalog of Federal Domestic Assistance Programs—13.801, Medicare-Supplementary Medical Insurance.)

Dated: February 17, 1978.

ROBERT A. DERZON,

Administrator, Health Care Financing Administration.

Approved: February 23, 1978.

JOSEPH A. CALIFANO, JR.,
Secretary.

[FR Doc. 78-5403 Filed 2-28-78; 8:45 am]

proposed rules

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.

[6320-01]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 207, 208, 212, 214]

[EDR-343-B; Economic Regulations Docket 31229; Dated February 23, 1978]

CHARTER FLIGHT DELAYS AND SUBSTITUTE AIR TRANSPORTATION

Supplemental Notice of Proposed Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice establishes a 31-day period for the filing of reply comments in a rulemaking proceeding about charter flight delays.

DATES: Comments by April 14, 1978. Reply comments by May 15, 1978. Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable. Requests to be put on the Service List: March 13, 1978. Docket Section prepares the Service List and sends it to each person listed, who then serves his comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 31229, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Dyson, Office of General Counsel, Rules Division, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking EDR-343, dated December 22, 1977 (42 FR 64905, December 29, 1977), the Board proposed to change its regulations, so as to allow a maximum of 6 hours' delay on all charter flights by all types of carriers.

Comments in response to EDR-343 were originally due February 13, 1978. In a letter dated January 30, 1978, counsel for the National Air Carrier Association (NACA) requested a 60-day extension of the period for filing comments on the notice. They further requested that, in light of the variety of alternatives likely to be recommended by the commenters, a 31-day period for reply comments be established. The NACA request was supported in three letters dated January 31, 1978, from counsel for several charter-only foreign air carriers.[1]

The request for an extension of the initial comment period was granted on February 6, 1978 (EDR-343A, 43 FR 5383, February 8, 1978) by the Associate General Counsel, Rules Division, under the authority delegated by § 385.20(d) of the Board's Organization Regulations (14 CFR 385.20(d)). However, since he does not have delegated authority to establish a period for the filing of reply comments, he has referred the second portion of the NACA request to the Board.

Because reply comments may be particularly useful to us in analyzing any recommendations that may be included in the initial comments, we have decided to grant the request. Accordingly, we will consider reply comments submitted by May 15, 1978.

Those persons planning to participate who wish to be served with the comments of others, and who are willing to serve their own comments and reply comments on others, may on or before the date shown at the beginning of this notice, request the Docket Section to place them on the Service List. The Service List will be prepared by the Docket Section and mailed to those named on it. Persons filing responsive comments should serve any person whose comment is dealt with in their responsive comments, whether or not either party is on the Service List.

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

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-5426 Filed 2-28-78; 8:45 am]

[1] British Caledonian Airways, Ltd., Dan-Air Services Ltd., and Condor Flugdienst GmbH.

[6320-01]

[14 CFR Part 223]

[Economic Regulations Docket 32160; EDR-346; Dated: February 23, 1978]

DEFINITIONS OF "HANDICAPPED" AND "RETIRED" PERSONS FOR FARE PURPOSES

Notice of Proposed Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish definitions of the terms "handicapped" and "retired," for the guidance of carriers wishing to establish reduced fares for handicapped and retired passengers in accordance with a recent amendment of the Federal Aviation Act that allows such special fares and requires the Board to define these terms.

DATES: Comments by: April 10, 1978. Reply comments by: May 1, 1978.

Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable.

Requests to be put on the Service List: March 21, 1978. Docket Section prepares the Service List and sends it to each person listed, who then serves his comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 32160, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Stephen Babcock, Office of the General Counsel, Civil Aeronautics Board, 202-673-5442.

SUPPLEMENTARY INFORMATION: Section 8(a) of Pub. L. 95-163, 91 Stat. 1281, enacted on November 9, 1977, amends section 403(b)(1) of the Federal Aviation Act of 1958 to require the Board to allow carriers to establish space-available reduced fares for the transportation of three classes of passengers: the handicapped (and any required attendants); people who are at least 60 years old and retired; and all people who are at least 65 years old.

Section 8(a) of the new law states that a "handicapped person" is "any person who has severely impaired vision or hearing, and any other physically or mentally handicapped person, *as defined by the Board,*" and that "retired" means "no longer gainfully employed *as defined by the Board.*" (Emphases added.)

The proposed definition of the phrase "physically or mentally handicapped" is based on the definition of "handicapped person" adopted by the Department of Health, Education, and Welfare (45 CFR 84.3(j), 42 FR 22678, May 4, 1977) for the purposes of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 706. The Board's proposed definition is somewhat simpler than the one adopted by HEW, however, since this definition must determine only eligibility for reduced rate space-available air transportation, whereas the Rehabilitation Act definition must take into account a great variety of potential discriminations against otherwise qualified handicapped persons.

Air carriers are already required to file in their tariffs all of their rules and regulations for transporting handicapped persons, including their rules for determining the kinds of handicaps which prohibit the transportation of the handicapped person for safety reasons. (ER-1020, adopted on August 25, 1977, in Docket 23904, 42 FR 43828 (August 31, 1977).) The rules proposed here are not intended to modify or otherwise affect those safety-related tariff rules, of course, but are rather intended to apply to those handicapped persons who may (either by themselves or with an attendant) be safely carried in accordance with the carrier's rules on that subject.

The Board's proposed definition of "no longer gainfully employed" is not based on any existing definition, and its allowance of partial employment reflects our surmise that the Congress intended us to adopt a liberal definition.

The proposd new § 223.11 to our existing regulations on free and reduced rate transportation (14 CFR Part 223) is simply intended to make it clear that carriers may adopt reasonable tariff rules, supplementing the regulations proposed here, concerning the space-available reduced fare transportation which section 403(b)(1) authorizes.

Finally, we will consider in this proceeding whether to define the term "handicapped" to include immigrant orphans, and we specifically solicit the views of interested members of the public on this question. The Board has already received a number of letters from persons interested in the placement of foreign orphan children with American families.[1] These children travel to the United States, principally from Asian counties, and are a definable class, specifically identified by the Immigration and Naturalization Service (see 8 CFR 204.1(b)). The writers of these letters have stressed the need of the adoption agencies to obtain free or reduced rate transportation for these children, and argue that the plight of these orphans is in itself a handicap of great magnitude.

We have tentatively concluded that these children should not be classifed as handicapped for the purpose of section 403 of the Act unless they are in fact emotionally or physically impaired, and the definition proposed here therefore does not specifically include them. We have not reached a firm decision on this important question, however, and will give it careful consideration, in light of both the comments that have already been received and those that we will receive in response to this notice, before taking final action.

Accordingly, it is proposed to amend Part 223 of the Board's Economic Regulations (14 CFR Part 223) as follows:

§ 223.1 [Amended]

1. In § 223.1, "Definitions," after the definition of the term "Free transportation," add the following new definition:

"No longer gainfully employed" or "retired," as those terms are used in section 403(b)(1) of the Act, means not regularly working at a full-time paying job.

2. In § 223.1, "Definitions," after the definition of the term "Original tariff," add the following new definition:

"Physically or mentally handicapped person," as used in section 403(b)(1) of the Act, means any person who has a physical or mental impairment (other than drug addiction or alcoholism), which substantially limits one or more major life activities.

3. Add the following new § 223.11:

§ 223.11 Space-available reduced fares for ministers of religion and for elderly, retired and handicapped people.

Carriers offering reduced fares on a space-available basis pursuant to subsection 403(b)(1) of the Act may establish reasonable tariff rules to assist in identifying those who qualify for transportation under that subsection.

(Secs. 204 and 403 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758 (as amended by 91 Stat. 1281); 49 U.S.C. 1324, 1373.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-5402 Filed 2-28-78; 8:45 am]

[1] These include letters from a number of families who wish to adopt these children and from several of their Senators and Congressmen, as well as letters from adoption agencies engaged in placement services and from their counsel. All of these letters have been placed in the official docket file for this proceeding.

[7510-01]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[14 CFR Part 1221]

THE NASA SEAL AND OTHER DEVICES, AND THE CONGRESSIONAL SPACE MEDAL OF HONOR

Procedures for Nomination of an Astronaut

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed regulation.

SUMMARY: The National Aeronautics and Space Administration (NASA) is proposing procedures for the nomination of an astronaut by the Admninistrator to receive the Congressional Space Medal of Honor. Pub. L. 91-96 authorizes the President to award the Medal in the name of Congress. Part 1221 would be amended to include a new Subpart 2—The Congressional Space Medal of Honor.

DATE: Any comments received by April 1, 1978, will be considered before a final regulation is adopted.

ADDRESS: Comments and requests for additional information are addressed to: Susan McGuire Smith, Office of General Counsel, Mail Code GG-1, NASA Headquarters, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT:

Susan McGuire Smith, 202/755-3924.

SUPPLEMENTARY INFORMATION: This proposed regulation has been coordinated with the Office of General Counsel, Department of Defenese.

Dated: February 23, 1978.

A. M. LOVELACE,
Deputy Administrator.

1. 14 CFR Part 1221 is amended by:
(a) Revising the Part heading:

PART 1221—THE NASA SEAL AND OTHER DEVICES, AND THE CONGRESSIONAL SPACE MEDAL OF HONOR

(b) Redesignating §§ 1221.100 through 1221.117 as Subpart 1221.1 with the following Subpart heading:

1221.1—NASA Official Seal, Insignia, Logotype, Official Program and Astronaut Badges, and Flags

(c) Adding a new Subpart 1221.2 reading as follows:

Subpart 1221.2—The Congressional Space Medal of Honor

Sec.
1221.200 Scope.
1221.201 Basis for award of the medal.
1221.202 Description of the medal.
1221.203 Nominations.
1221.204 Proceedings of the NASA Incentive Awards Board.

Authority: Pub. L. 91-76, September 29, 1969.

Subpart 1221.2—The Congressional Space Medal of Honor

§ 1221.200. Scope.

This Subpart establishes procedures for nominating an astronaut for the Congressional Space Medal of Honor.

§ 1221.201 Basis for award of the medal.

(a) The standard for award of the Congressional Space Medal of Honor is established by Pub. L. 91-76 (42 U.S.C. 2461) which provides that the President may award the Medal to any "astronaut who in the performance of his duties has distinguished himself by exceptionally meritorious efforts and contributions to the welfare of the Nation and of mankind."

(b) Only one Congressional Space Medal of Honor may be awarded to a person. However, for each succeeding act that would otherwise justify the award of the Medal, the President may award a suitable bar or other device.

(c) The Medal may be awarded to any person who is or has been designated to travel in space and who has distinguished himself or herself while undertaking duties in preparation for, execution of, or subsequent to, but in connection with, a space flight.

(d) The Medal may be awarded for actions occurring before the effective date of this Subpart 1221.2, and, when appropriate, posthumously.

§ 1221.202 Description of the medal.

The description of the Congressional Space Medal of Honor, which was designed by the Institute of Heraldry, U.S. Army, is set forth in Appendix A to this Subpart. Each person awarded the Medal also shall receive a citation describing the basis for the award.

§ 1221.203 Nominations.

(a) Formal nominations for award of the Congressional Space Medal of Honor on behalf of NASA will be made by the Administrator to the President.

(b) Any person may recommend to the Administrator that an astronaut be nominated for award of the Medal. Such a recommendation must be in writing, and must describe in concise detail the events believed to warrant award of the Medal. The recommendation should, if appropriate, be accompanied by supporting documentation, such as eyewitness statements, extracts from official records, sketches, photographs, etc.

(c) All recommendations for nominations submitted to the Administrator or made on his own initiative will be referred to the NASA Incentive Awards Board for the purpose of investigating and making findings of fact and giving advice to the Administrator.

(d) Any recommendation involving an astronaut who is a member of the armed services on active duty or who is employed by another agency of the Federal Government but temporarily assigned or detailed to NASA shall also be transmitted to the Secretary of Defense or the head of the employing agency, as appropriate, for his or her recommendation.

(e) The Administrator will forward to the President his recommendation, and that of the astronaut's employing agency, as appropriate.

§ 1221.204 Proceedings of the NASA Incentive Awards Board.

The NASA Incentive Awards Board shall thoroughly consider the facts giving rise to a recommendation for nomination and shall prepare a report for the Administrator. The Board should, to the extent practicable, coordinate its efforts with those of the astronaut's employing agency, as appropriate. Its final report must take into account any pertinent information submitted by the employing agency.

2. In Title 14, CFR, Chapter 5, the table of contents is revised to change the title of Part 1221 to read as follows:

The NASA Seal and Other Devices, and the Congressional Space Medal of Honor

APPENDIX A—CONGRESSIONAL SPACE MEDAL

OBVERSE

DESCRIPTION

A circular green enamel wreath of laurel surmounted by a five-pointed gold star (with vertical point downward) and issuing from between each point a gold flame, the star surmounted by a light blue enamel cloud bank with five lobes edged in gold bearing a five-pointed dark blue enamel star fimbriated gold and charged in center with a diamond; standing upon the wreath at top center a gold eagle with wings displayed.

SYMBOLISM

The laurel wreath, a symbol of great achievement, with the overlapping star points, simulates space vehicles moving to greater accomplishments through space. The flames signify the dynamic energy of the rocket era and the imagination of the men in the space program of the United States. The stylized glory cloud alludes to the glory in the coat of arms of the United States and to the high esteem of the award. The dark blue voided star symbolizes the vast mysteries of outer space while the brilliancy of the feat is represented by a diamond. The eagle with wings raised in the spirit of peace represents man's first landing on another planet.

REVERSE

DESCRIPTION

The reverse bears in center the inscription "CONGRESSIONAL" arranged in a semicircle above the inscription "SPACE MEDAL PRESENTED TO"; in base is space for the name of the recipient and the date, all within an outer circle of fifty stars.

SUSPENSION RIBBON

DESCRIPTION

A ribbon 1⅜ inches in width consisting of the following vertical stripes: gold 1/16 inch, dark blue ¼ inch, light blue 9/32 inch, white 1/16 inch, red 1/16 inch, white 1/16 inch, light blue 9/32 inch, dark blue ¼ inch, gold 1/16 inch.

CABLE NOS. OF COLORS

Gold	65021 (old gold).
Dark blue	70076 (independence blue).
Blue	65014 (light blue).
Red	65006 (scarlet).
White	65005.

SYMBOLISM

The scarlet center line on the white band symbolizes the courage of the astronauts in the nation's manned space program and the fire power of rockets that carry the crew through the earth's atmosphere (light blue); the light blue is the same color as the chief of the shield of the coat of arms of the United States which appears on the President's flag. The dark blue symbolizes the hostile environment of space, the gold edge representing success and accomplishment. Red, white and blue are also the national colors of the United States.

MINIATURE

DESCRIPTION

A one-half size replica of the medal and suspension ribbon approximately 2 9/16 inches in overall length.

LAPEL EMBLEM

DESCRIPTION

A miniature of the obverse of the medal, 9/16 inch in diameter, all gold with a diamond in center.

ROSETTE

DESCRIPTION

One-half inch in diameter in the colors of the ribbon.

[FR Doc. 78-5312 Filed 2-28-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 443]

HEALTH SPAS

Additional Hearings on Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Additional hearings scheduled at New York, N.Y.

SUMMARY: On May 24, 1977, the presiding officer published in the FEDERAL REGISTER a Final Notice of a proposed trade regulation rule proceeding con-

cerning Health Spas. Hearings in addition to those listed in that notice have been scheduled.

DATES: Hearings will be held on March 13 and 14, 1978, in New York City commencing at 10:00 a.m. and 9:00 a.m., respectively.

ADDRESSES: Hearing location: Room C and D, 2204-2206 of the Federal Trade Commission, New York Regional Office in the Federal Building at 26 Federal Plaza, New York, New York.

FOR FURTHER INFORMATION CONTACT:

Mr. John Crowley, 212-264-7150, Federal Trade Commission, New York Regional Office, Federal Building, 26 Federal Plaza, New York, N.Y. 10007.

SUPPLEMENTARY INFORMATION: On May 24, 1977, the presiding officer published in the FEDERAL REGISTER (42 FR 26432) a Final Notice of a proposed trade regulation rulemaking proceeding concernin Health Spas. The notice included a schedule of dates and places of hearings.

Two witnesses were unable to be scheduled at the New York hearings due to a dispute concerning their proposed testimony. This dispute has now been resolved and the presiding officer has scheduled additional hearings to be held commencing at 10 a.m., March 13, 1978, in Room C and D, 2204-2206, at the Federal Trade Commission New York Regional Office, Federal Building, 26 Federal Plaza, New York, N.Y. 10007. The hearings will be confined to the testimony of these two witnesses. The testimony of the two witnesses will be in public hearing; cross-examination of the two witnesses will be in closed sessions and not open to the public.

Prepared statements or outlines and exhibits of the witnesses will be made available for inspection at the New York Regional Office at the above address.

For additional information, instructions and requirements regarding the proceeding, see the presiding officer's Final Notice in the FEDERAL REGISTER of May 24, 1977, 42 FR 26432.

Issued: February 24, 1978.

ROGER J. FITZPATRICK,
Presiding Officer.

[FR Doc. 78-5340 Filed 2-28-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-14493; File No. S7-737]

REGULATION OF CLEARING AGENCIES

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rule is intended to disclose the names of depository participants to issuers and other qualified parties for the purpose of establishing a point outside the depository from which the distribution of communications to beneficial shareowners may be initiated. The proposal facilitates issuer-shareowner communications by codifying an existing practice between issuers and depositories and by making depository participant information available to certain qualified non-issuers without the need for issuer cooperation.

DATES: Comments must be received on or before: April 30, 1978.

ADDRESS: Written comments, submitted in triplicate, should be addressed to the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, and refer to File No. S7-737.

FOR FURTHER INFORMATION CONTACT:

Dennis E. Carlton, Attorney, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-755-8946.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Securities and Exchange Commission (the "Commission"), pursuant to sections 2, 17A and 23(a) of the Act [15 U.S.C. 78b, 78q-1 and 78w(a)], publishes for public comment an amendment to Title 17, Chapter II, Part 240 of the Code of Federal Regulations to add § 240.17Ad-8.

PROPOSED RULE 17Ad-8

Proposed Rule 17Ad-8 would require registered clearing agencies to transmit a "securities position listing"[1] on a periodic basis to each issuer whose securities the clearing agency holds and, upon request, to other persons who certify their entitlement under Federal law or applicable state law to inspect, obtain, or otherwise gain access to the issuer's list of shareholders of record or securities position listing or who attest to the issuer's decision to provide the claimant with the position listing. Under the rule, issuers are given the opportunity to contest such claims.

A securities position listing would have to be transmitted by each registered clearing agency, without charge, annually and, if requested, quarterly to each issuer whose securities the clearing agency holds. Additional listings also would be provided to issuers upon request. Listings furnished pursuant to the proposed rule, except annual and quarterly listings provided to issuers, would be subject to a reasonable charge based on the clearing agency's cost of preparation.

DISCUSSION

Chapter V of the Commission's Final Report of the Street Name Study recommended that "each depository be required to transmit periodically to each issuer whose securities the depository holds of record a list of the persons on whose behalf the depository holds the securities."[2] The recommendation of the Street Name Study was intended to codify an existing depository practice which facilitates issuer-shareowner communications by enabling issuers to initiate the communication process with depository participants instead of with the depositories.[3] The proposed rule would formalize this practice and enable certain qualified non-issuers to obtain depository participant information without the need for issuer cooperation that is so important now.

Depositories generally have refused to provide participant information to persons other than issuers.[4] The Commission is aware of several instances where issuers have taken the position that under state law they are obligated to reveal only shareholders of record, a position which discloses depositories but not depository participants. The general unavailability of

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[1] A "securities position listing" is defined by the proposed rule to mean: "[W]ith respect to the securities of any issuer . . ., a list of those participants in [a registered] clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date."

[2] SEC, Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other than the Name of the Beneficial Owner of Such Securities, pursuant to Section 12(m) of the Securities Exchange Act of 1934 (Committee Print 1976) (the "Street Name Study"), 55.

[3] Under the "omnibus proxy procedure," the depository prepares for an issuer having a shareholders' meeting a list of the names and holdings of participants that have depository positions in the issuer's securities as of the record date. The depository then forwards the list to the issuer along with an "omnibus proxy" which authorizes each participant, to the extent of the participant's position, to act as the depository's proxy and to vote the securities.

[4] Requests from non-issuers for position listings have been received by most depositories. The majority of such requests are from "proxy solicitors." The depositories comply with the requests only after receiving written authorization from the issuers involved or after satisfying themselves that the solicitor is inquiring on behalf of the relevant issuer. Otherwise, unless the request is from a governmental authority or is accompanied by a court order for production of the listing, the request is refused.

depository participant information creates an impediment to communications between non-issuers and beneficial shareowners.

The proposed rule overcomes that impediment for qualifying non-issuers while protecting the interests of issuers and depositories. Issuers are concerned that shareowner information be disclosed only to proper parties. The proposed rule (i) limits the nonissuers who may obtain the information without issuer consent to those entitled by Federal law or to those entitled under state law to recordholder information, and (ii) requires the nonissuers to give prior notice to issuers of the basis for claiming entitlement to the information. The former requirement reduces the likelihood of improper or frivolous claims by requiring a claimant to have, and assert, a basis in state or Federal law for obtaining a position listing, and the latter requirement gives the issuer an opportunity to contest the claim before the list is dislosed.[8]

The rule also provides for the interests of clearing agencies. By establishing guidelines for the mandatory issuance of position listings, the proposed rule clarifies the responsibility of clearing agencies to issuers and removes a potential liability perceived by clearing agencies for the release of participant information to non-issuers. Under the proposed rule, a clearing agency need not investigate an applicant's claim for a position listing which on its face meets the requirements of paragraph (c). The Commission believes that registered clearing agencies should not become embroiled in disputes between issuers and nonissuer claimants over position listings; the depository's role is to act in accordance with the provisions of the proposed rule unless restrained by a court or other legal authority.

Accordingly, it is proposed to amend 17 CFR Part 240 by adding § 240.17Ad-8 as follows:

§ 240.17Ad—8 Transmission of securities position listings.

(a) For purposes of this section, the term "securities position listing" means, with respect to the securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

(b) A registered clearing agency shall, without charge, transmit not less frequently than annually, and more frequently if the issuer requests, a securities position listing to each issuer whose securities the clearing agency holds. To the extent, however, that the issuer requests securities position listings more frequently than once per calendar quarter, the additional listings may be supplied subject to payment by the issuer of the clearing agency's reasonable expenses for preparing each additional listing.

(c) A registered clearing agency shall promptly furnish a securities position listing, upon payment of the clearing agency's reasonable expenses for preparing such listing, to any person who certifies to the clearing agency in a signed statement that, after due inquiry and to the best of his knowledge, (1) such person is entitled under applicable state law to inspect, obtain or otherwise gain access to the subject issuer's list of shareholders of record and has obtained from the issuer access to, or made application to the issuer for, such list, or (2) such person is entitled under Federal law, or rules or regulations thereunder, to a securities position listing or listing of an issuer's shareholders of record, or (3) the subject issuer accedes to such person's request for a securities position listing. The claimant shall further certify to the clearing agency that a signed copy of the claim has been given to the Secretary of the subject issuer five business days (unless the claimant is a bidder in a tender offer subject to Section 14(d) of the Securities Exchange Act of 1934, or the rules and regulations thereunder, in which case the period shall be one business day), not to include week-ends or public holidays, prior to presentation of the claim to the clearing agency. In the event that a party certifies his entitlement to a securities position listing pursuant to alternatives (1) or (2), the claim also must specify the applicable state or Federal authority and, if necessary, steps taken to comply therewith.

(d) It shall be unlawful for any person willfully to violate any provision of this rule or knowingly and willfully to certify any information pursuant to this rule which is false or misleading with respect to any material fact.

Interested persons are invited to submit their views upon proposed Rule 17Ad-8 in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, no later than April 30, 1978. Reference should be made to File No. S7-737. All comments received will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

FEBRUARY 22, 1978.

[FR Doc. 78-5339 Filed 2-28-78; 8:45 am]

[8] The allowance of a short time period for contesting a claim in a tender offer situation reflects the compelling time constraints of such a situation.

[6740-02]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Parts 2, 154]

[Docket No. RM78-4]

INCORPORATION OF COMPENSATION PROVISIONS IN CURTAILMENT PLANS

Extension of Comment Period

AGENCY: Federal Energy Regulatory Commission.

ACTION: Further extension of time.

SUMMARY: The Commission is granting an extension of time to and including March 1, 1978, for filing initial comments and to and including April 3, 1978, for filing reply comments in the proposed rulemaking proceeding docketed as RM78-4. This extension is being granted in order to ensure that all parties have adequate time in which to respond to the proposed rulemaking.

DATES: Initial comments must be received on or before March 1, 1978, and reply comments must be received on or before April 3, 1978.

ADDRESS: Send comments to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Kenneth F. Plumb, Secretary, 202-275-4166.

SUPPLEMENTARY INFORMATION: On February 2, 1978, the Puerto Rico Manufacturers Association filed a motion requesting a further extension of time for submitting written comments on the Preliminary Notice of Proposed Rulemaking, issued November 30, 1977, and published December 8, 1977 (42 FR 62018). A previous extension of time for filing initial and reply comments in this proceeding was granted by Commission Notice issued December 23, 1977. (43 FR 1509, Jan. 10, 1978.)

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5369 Filed 2-28-78; 8:45 am]

[4810-31]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[27 CFR Parts 6, 8]

[Reference Notice No. 315]

UNLAWFUL TRADE PRACTICES UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT

Extension of Comment Period

AGENCY: Bureau of Alcohol, Tobacco and Firearms.

ACTION: Extension of period for filing written comments.

SUMMARY: On December 30, 1977, the Bureau of Alcohol, Tobacco and Firearms published an advance notice of proposed rulemaking in the FEDERAL REGISTER [42 FR 65204]. That advance notice announced that ATF was considering proposing new and amended regulations implementing the unlawful trade practice provisions of the Federal Alcohol Administration Act. Interested persons were given until February 28, 1978, to submit their written comments.

A number of industry members and individuals have requested additional time in which to submit their written comments. The Director feels that extending the comment period until April 15, 1978, will provide adequate time for the preparation and submission of written comments by interested persons.

DATE: Comments must be received on or before April 15, 1978.

ADDRESS: Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226 (Attention: Chief, Regulations and Procedures Division).

FOR FURTHER INFORMATION CONTACT:

Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, telephone 202-566-7626.

REX D. DAVIS,
Director.

FEBRUARY 27, 1978.

[FR Doc. 78-5589 Filed 2-28-78; 10:52 am]

[3810-70]

DEPARTMENT OF DEFENSE

Office of the Secretary

[32 CFR Part 288]

[DoD Instruction No. 7230.7]

USER CHARGES

Schedules of Fees and Rates

AGENCY: Office of the Secretary of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is proposing changes to its "Schedule of Fees and Rates." The fees and rates apply to certain services relating to copying, certifying, and searching of records rendered to the public. The changes are necessary to reflect increases in consumer prices.

DATES: Comments must be received by March 31, 1978.

ADDRESS: Send comments to: Office of the Deputy Assistant Secretary of Defense (Management Systems), the Pentagon, Room 3E831, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert E. Flaherty, 202-697-7297.

SUPPLEMENTARY INFORMATION: In FR Doc 67-4159 as published in the FEDERAL REGISTER on April 14, 1967 (32 FR 6025), the Office of the Secretary of Defense issued this part establishing policies and procedures for improved implementation of the "user charges" as expressed in Title V of the Independent Offices Appropriation Act of 1952 (5 U.S.C. 140) and Bureau of the Budget Circular No. A-25, September 23, 1959, as amended, Subject: "User Charges." Subsequently, there were published modifications to certain sections of this part; namely, 34 FR 12339 of July 26, 1969; 36 FR 22236 of November 23, 1971; 37 FR 23719 of November 8, 1972, and 42 FR 62503 of December 13, 1977. This proposed revision adjusts the Schedule of Fees and Rates to reflect consumer price increases since the Schedule was last published. Accordingly, § 288.10 is revised as follows:

Sec.
288.10 Schedule of fees and rates.

AUTHORITY: 5 U.S. Code, sec. 140; Title V, Pub. 2, 137, 82d Cong., Act of Aug. 31, 1951, 65 Stat. 290.

§ 288.10 Schedule of fees and rates.

(a) The schedule applies to authorized services related to copying, certifying and searching records rendered to the public by Components of the Department of Defense, except when those services are excluded or excepted from charges under § 288.3(d) of, or § 288.9 to, this Instruction. Except as provided in special cases prescribed below, a minimum fee of $2.40 will be levied for processing any chargeable case. Normally only one (1) copy of any record or document will be provided.

(b) *Requests involving:*

(1) *Training and education*

(i) Transcripts

	Fee
Original copy	$2.40
Each additional copy	.30

(Includes requests for transcripts of graduation from military academies and schools.)

(ii) Certificates

Original copy	$2.40
Each additional copy	.30

(Includes all requests for certificates, verification of attendance, and course completion from service schools and other facilities.)

(2) *Medical and dental records of patients and former patients when requested for purposes other than further treatment.* Covers requests for information from or copies of medical records, including Clinical Records (inpatient records of military and nonmilitary patients), Health Records (military outpatient records), Outpatient Records (nonmilitary outpatient records), Dental Records, and loan of X-rays.

Searching and processing (per hour)	$9.60
Minimum charge	6.00
Each typewritten page	2.40
Office copy reproductions (per image)	.06
Loan of each X-ray	1.80
Copy of X-ray 8 in by 10 in	1.80
10 in by 12 in	2.40
14 in by 17 in	3.60

(3) *Military Membership and Record (Excluding Medical and Dental Records.)*

Address of record, each	$2.40

Copies of releasable military personnel records, such as effectiveness reports for officers and enlisted personnel reproduced for the personal use of active, retired and former members or next of kin of missing in action or deceased member of the Armed Forces.

Minimum charge (up to 6 reproduced images)	$2.40
Each additional image	.06
Statement of verification of service of report of separation, for individuals with other than honorable discharges	3.60

(4) *Photography.*

(i) Still pictorial or documentary photographic prints, and not more than three prints may be sold from any individual negative on each order. Unlisted standard sizes of prints may be furnished, if available, at proportionate rates.

8 in by 10 in single weight glossy finish, 1st print	$1.50
2d and 3d prints, each	1.20
8 in by 10 in double weight matte finish, 1st print	2.00
2d and 3d prints, each	1.80
11 in by 14 in double weight matte finish, each	4.20
16 in by 20 in double weight matte finish, each	5.50
20 in by 24 in double weight matte finish, each	7.75
35 mm color transparency slide made from color negative material	4.20
35 mm duplicate from 35 mm slide	.60
4 in by 5 in black and white negative, each	2.25
4 in by 5 in color transparencies or color negative, each	8.00
8 in by 10 in color transparencies or color negative, each (in quantities not to exceed three copies of any one view)	16.75
8 in by 10 in color type "C" print, 1st print	5.40
2d and 3d prints, each	2.40
11 in by 14 in color type "C" prints, 1st print	9.60
2d and 3d prints, each	6.00
16 in by 20 in color type "C" print, each	21.00
16 in by 20 in color type "C" print, mounted on 20 in by 24 in cardboard, each	23.00
70 mm color internegative, each	7.00

(ii) Aerial photographic prints, contact prints, or exact negative sizes, single weight glossy or double weight semi-matte, black and white, per frame.

Contact prints	Fee
70 mm film	$2.40
5 in by 5 in, paper or film	2.40
9 in by 9 in, 10 in by 10 in, paper	2.40
9 in by 9 in, 10 in by 10 in, film	3.60
Enlargements	
9 in by 9 in (from 70 mm only), paper	2.40
9 in by 9 in (from 70 mm only), film	3.60
12 in by 12 in thru 16 in by 16 in (1.5X), paper	4.80
18 in by 18 in thru 20 in by 20 in (2X), paper	6.00
24 in by 24 in thru 30 in by 30 in (3X), paper	7.20
36 in by 36 in thru 40 in by 40 in (3X), paper	14.40

For an intermediate-size enlargement, use the price listed for the next larger size.

(iii) Aerial photographic indices and mosaic copies, each.

10 in by 12 in	$3.60
20 in by 24 in	6.00

(iv) Reproduction of cover overlays, each.

Transparent foil film overlays	$3.00
Transparent paper overlays	1.80

(v) Motion Picture.

	Price per foot	
	Contact	Reduction
Color		
16 mm work print (negative/positive)	$0.17	$0.24
16 mm reversal work print	.17	.24
16 mm master positive	.37	.64
16 mm dupe negative (from master positive)	.48	.53
16 mm reversal dupe negative	.48	.53
16 mm internegative (from reversal original)	1.00	—
16 mm short rolls (under 200 ft), add	.06 to basic price	
16 mm tab to tab printing, add	.15 to basic price	
35 mm work print (negative/positive)	.22	—
35 mm master positive	.72	—
35 mm dupe negative	.72	—
35 mm reversal dupe negative	1.20	—
35 mm short rolls (under 400 ft), add	.06 to basic price	
35 mm tab to tab printing, add	.18 to basic price	
Black and white		
16 mm work print (negative/positive)	.10	.16
16 mm master positive (fine grain)	.13	.17
16 mm dupe negative	.20	.26
16 mm short rolls (under 200 ft), and	.06 to basic price	
16 mm tab to tab printing, add	.07 to basic price	
35 mm work print	.11	—
35 mm master positive	.14	—
35 mm dupe negative	.24	
35 mm short rolls (under 400 ft) add	.06 to basic price	
35 mm tab to tab printing, add	.08 to basic price	
Magnetic tape		
Dub (16 mm, 35 mm, ¼ in) per hour		66.00
Miscellaneous		
Searching, each hour or fraction thereof		15.60
Minimum charge per order (including stock search)		30.00
16 mm film to 2 inch video tape (does not include tape) per hour		270.00
Minimum charge		150.00

(5) *Construction and engineering information.* Copies of aerial photograph maps, specifications, permits, charts, blueprints, and other technical engineering documents.

	Fee
Searching, per hour or fraction thereof (including overhead costs)	$9.60
First print	1.80
Each additional print of same document.	.60

(6) *Copies of medical articles and illustrations.* Standards contained in Title V of the Independent Offices Appropriation Act of 1952 (5 U.S.C. 140) will be utilized in computing costs.

(7) *Claims, Litigation.* (Includes court-martial records furnishing information from Report of Claims Investigations, e.g., automobile collision investigations, safety reports, etc.)

Requests pertaining to private litigation and to cases in which the United States is a party and where court rules provide for reproduction of records without cost to the Government (if not covered in (2) or (3) above.

Searching processing (per hour)	$9.60
Minimum charge	6.00
Office copy reproductions (minimum up to six (6) reproduced images)	2.40
Each additional image	.06
Certification and validation with seal, each	3.60

NOTE.—Charges for professional search or research will be made in accordance with paragraph (10) below.

(8) *Publications and Forms.* A search and/or processing fee as prescribed in (10), below, will be made for requests requiring extensive time (one hour or more).

(i) Shelf Stock. (Requestors may be furnished more than one copy of publication or form if it does not deplete stock levels below projected planned usage.)

Minimum fee per request (up to 6 repro pages)	$2.4
plus	
Forms, per copy	.06
Publications, per printed page	.01

(Examples: Cost of 20 forms, $3.60; cost of a publication with 100 pages, $3.40.)

(ii) Office copy reproduction (when shelf stock is not available).

Minimum charge (up to 6 reproduced pages)	$2.40
Each additional image	.06

(9) *Engineering data (microfilm).*

Aperture cards	
Silver duplicate negative, per card	$0.50
When key punched and verified, per card	.60
Diazo duplicate negative, per card	.42
When key punched and verified, per card	.50
35 mm roll film, per frame	.36
16 mm roll film, per frame	.30
Paper prints (engineering drawings), each	.60
Paper reprints of microfilm indices, each	.06

(10) *General.* Charges for any additional services not specifically provided above and consistent with the provisions of the basic instruction will be made by the respective DoD Components at the following rates:

	Fee
Clerical search and processing per hour	$9.60
Minimum charge	6.00
Professional searching or researching	

(to be established at actual hourly rate prior to search. A minimum charge will be established at ½ hourly rate.)

Minimum charge for office copy reproduction (minimum up to 6 images)	$2.40
Each additional image	.06
Each typewritten page	2.40
Certification and validation with seal, each	3.60
Hand drawn plots and sketches, each hour or fraction thereof	7.20

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.

FEBRUARY 23, 1978.

[FR Doc. 78-5381 Filed 2-28-78; 8:45 am]

[4310-10]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[41 CFR Part 114-50]

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

Relocation Assistance Advisory Services

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites comments on a proposal to amend Departmental regulations pertaining to implementation and administration of activities under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646). The amendment would modify existing requirements relative to determination of the need for development of a relocation assistance plan and establish review and approval procedures when a plan is required.

DATE: Comments must be received by April 10, 1978.

ADDRESS: Send comments to the Chief, Division of Property Management, Office of Administrative and Management Policy (PM/AMP), room 5310, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

James O. Wyatt, Chief, Division of Property Management, telephone number area code 202-343-3185.

SUPPLEMENTAL INFORMATION: All written comments made pursuant to this notice will be available for public inspection at the Division of Property Management (Rm. 5310) Department of the Interior, during regular business hours, 7:45 a.m. to 4:15 p.m. (except holidays). The primary author of this proposal is George W. Sandberg, Room 5310, Department of the Interior, Washington, D.C., 20240, Phone 343-3185.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular No. A-107.

RICHARD R. HITE,
Deputy Assistant Secretary of the Department of the Interior.

FEBRUARY 21, 1978.

41 CFR 114-50 is amended as follows:

Amend § 114-50.402 to read as follows:

§ 114-50.402 Relocation plan.

In conjunction with a project proposal involving acquisition of real property, a determination must be made during the pre-authorization planning phase whether the real property acquisition activities will result in the displacement of persons from their dwellings, businesses, or farm operations. Where land acquisition activities will cause such displacement, a relocation plan shall be developed prior to commencement of acquisition activities in accordance with procedures outlined in § 114-50.500.

(a) The plan shall include the following information, as a minimum:

(1) The estimated number of individual families, businesses, farm operations, and non-profit organizations which are to be relocated.

(2) The availability of decent, safe and sanitary replacement housing (both sale and rental) within the financial means of the individuals and families being displaced.

(3) The probable impact of other federal and/or federally-assisted relocation programs on the availability of replacement housing.

(4) The estimated total cost, by category (moving expense, replacement housing for homeowner, etc.), of payments to displaced persons.

(5) The estimated cost of administering required relocation services to displaced persons.

(6) The name and title of the person responsible for preparation of the plan and the date of preparation.

(b) Each relocation plan shall be:

(1) Coordinated with other Federal and State agencies and private concerns having relocation programs within the project area, to ensure that the real estate market from which replacement housing will be obtained is capable of supplying the demands of all users of housing. (See also § 114-50.403 and 114-50.404); and

(2) Updated periodically to reflect current real estate conditions. When funds have been appropriated for commencement of real property acquisition, the relocation plan will be continuously updated and serve as a basis for accomplishing required relocation activities.

(3) Reviewed and approved at the bureau headquarters office level prior to commencement of acquisition activities, (e.g., development of property descriptions, title examination, appraisals, negotiation, etc.).

(4) Submitted (copy only) when approved, to the Assistant Secretary-Policy, Budget and Administration (AMP/PM).

(c) A more elaborate relocation plan may be required in instances where acquisition of real property for a program or project will result in the displacement of a substantial number of persons in a metropolitan area, particularly where low or moderate income persons are involved. In any such instances, Bureaus and Offices shall be guided by the relocation plnanning instructions promulgated by the Department of Housing and Urban Development in its Relocation Handbook 1371.1.

[FR Doc. 78-5299 Filed 2-28-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 78-65; RM-2987]

FM BROADCAST STATION IN BELPRE, OHIO

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Belpre, Ohio, as that community's first FM assignment. Petitioner, Max Bungard, states the proposed channel could provide a first local aural broadcast service to Belpre.

DATES: Comments must be received on or before April 18, 1978, and reply comments on or before May 8, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

NOTICE OF PROPOSED RULEMAKING

Adopted: February 17, 1978.

Released: February 24, 1978.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Belpre, Ohio), BC Docket No. 78-65, RM-2987.

By the Chief, Broadcast Bureau.

1. *Petitioner, proposal, comments.* (a) Petition for rulemaking, [1] filed by Max Bungard ("petitioner"), proposing the assignment of Channel 296A to Belpre, Ohio, as a first FM assignment to that community. No responses to the proposal were received.

(b) The channel can be assigned in conformity with the minimum distance separation requirements.

(c) Petitioner states that if the channel is assigned, he will apply for it.

2. *Community data.* (a) *Location.* Belpre, in Washington County, is located 256 kilometers (160 miles) east of Cincinnati, Ohio, and 120 kilometers (75 miles) southwest of Wheeling, W. Va.

(b) *Population.* Belpre—7,189; Washington County—57,160.[2]

(c) *Local broadcast service.* There is no local aural broadcast service in Belpre. However, it receives service from Marietta, Ohio, and Parkersburg, W. Va., located 19 kilometers (12 miles) and 8 kilometers (5 miles) distant, respectively.

3. *Economic data.* Petitioner states that there was a 32.7 percent increase in Belpre's population between 1960-70. We are told that the Belpre subdivision of Washington County is expanding and growing faster than most other county subdivisions and has become the home of a large base of industry, finance, transportation and education. Petitioner asserts that the proposed station would give the residents of Belpre and surrounding area in the southern part of Washington County their first local full-time facility.

4. *Preclusion studies.* Because Belpre is part of a metropolitan area (Marietta, Ohio, approximately 19 kilometers (12 miles) distant, and Parkersburg, W. Va., approximately 8 kilometers (5 miles) distant), a preclusion study was made. The study indicates that preclusion would occur only on the co-channel. Four communities (Marietta, Ohio, population 16,861, Parkersburg, 44,208, Williamstown, 2,743, and St. Marys, W. Va., 2,348) would be affected as a result of the proposed assignment. However, Marietta, Parkersburg, and St. Marys have one or more FM assignments. Williamstown has no local aural service, but is located immediately across the Ohio River from Marietta. Moreover, it is much smaller than Belpre.

5. In view of the apparent need for a first local aural broadcast service in Belpre and the fact that preclusion would not be an impediment, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules as follows:

City and Channel No.
Belpre, Ohio; Present:—; Proposed: 296A.

[1] Public Notice of the petition was given on November 7, 1977, Report No. 1088.

[2] Population figures are taken from the 1970 U.S. Census.

6. Authority to institute rule making proceedings; showings required; cut-off procedures; and filing requirements are set forth below and are incorporated herein.

NOTE.—A showing of continuing interest is required by paragraph 2 before a channel will be assigned.

7. Interested parties may file comments on or before April 18 1978, and reply comments on or before May 8, 1978.

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

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the Notice of proposed rule making to which this appendix is attached.

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

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

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

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

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of proposed rulemaking to which this appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission Rules.)

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

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

[FR Doc. 78-5399 Filed 2-28-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[BC Docket No. 78-66; RM-2984]

FM BROADCAST STATION IN ONALASKA, WIS.

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a first Class A FM channel to Onalaska, Wis. Petitioner, Everybody's Mood, Inc., states that the proposed station could provide Onalaska with a first local aural broadcast service.

DATES: Comments must be received on or before April 18, 1978, and reply comments on or before May 8, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

NOTICE OF PROPOSED RULEMAKING

Adopted: February 17, 1978.

Released: February 24, 1978.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Onalaska, Wis.,) BC Docket No. 78-66, RM-2984.

By the Chief, Broadcast Bureau.

1. *Petitioner, proposal, comments.* (a) Petition for rulemaking,[1] filed October 4, 1977, by Everybody's Mood, Inc. ("petitioner"), proposing the assignment of Channel 261A to Onalaska, Wis., as a first FM assignment to that community. No responses were made to the proposal.

(b) Petitioner states it will promptly apply for the channel, if assigned.

2. *Community data.* (a) *Location.* Onalaska, in La Crosse County, is located 290 kilometers (182 miles) northwest of Milwaukee, and adjacent to La Crosse, Wisconsin.

(b) *Population.* Onalaska—4,909; La Crosse County—80,468.[2]

(c) *Local broadcast service.* There is no local aural broadcast service in Onalaska. It receives service from AM Stations WIZM, WKTY and WLCX and FM Stations WIZM-FM, WSPL—FM, and WLXR-FM in La Crosse.

3. *Economic data.* Petitioner states that the population of Onalaska has increased over 55 percent between 1960-70. It notes that Onalaska is a center for agriculture and industry for the area. Petitioner offers a description of Onalaska's form of government, the local geography, school system, industrial and commercial activity and other material in an effort to show the need for the assignment.

4. *Preclusion studies.* Preclusion would be caused on the co-channel only. Sparta, Wis. (population 6,258) is the only community of over 1,000 population that would be precluded. That would not be an impediment to the assignment as Sparta already has AM and FM stations.

5. *Other considerations.* Petitioner proposes a transmitter site seven miles east of Onalaska in order to meet the 160 kilometer (105 miles) distance separation requirement to Station KAUS-FM (Channel 260) in Austin, Minn., and the 105 kilometer (65 miles) distance separation requirement to Station WBIZ-FM (Channel 264) in Eau Claire, Wis. However, this location will place a 366 meter (1,200 feet m.s.l.) peak between the transmitter site and the community to be served. The peak appears to extend approximately 137 meters (450 feet) above the ground level of the transmitter site and Onalaska. Section 73.315(b) provides, among others, that the location should be so chosen that line-of-sight can be obtained from the antenna over the principal city or cities to be served and that in no event should there be a major obstruction in this path. Petitioner should address this issue[3] and submit terrain profiles between the proposed site and Onalaska and should show the expected signal levels in the service area.

[1] Public Notice of the petition was given on October 25, 1977, Report No. 1084.

[2] Population figures are taken from the 1970 U.S. Census.

[3] Although petitioner claims that Onalaska would be encompassed within the 70 dBu contour, data in support of this assertion is lacking, and the effects of shadowing

(Continued)

6. Comments are invited on the proposal to amend the FM Table of Assignments with regard to the community of Onalaska, Wis., as follows:

City and Channel No.	
Onalaska, Wis., Present: —; Proposed: 261A.	

7. The Commission's authority to institute rulemaking proceedings; showings required; cut-off procedures; and filing rquirements are set forth below and are incorporated herein.

NOTE.—A showing of continuing interest is required by paragraph 2 before a channel will be assigned.

8. Interested persons may file comments on or before April 18, 1978, and reply comments on or before May 8, 1978.

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

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the notice of proposed rulemaking to which this appendix is attached.

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

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

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

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

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rulemaking to which this appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission Rules.)

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

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

[FR Doc. 78-5400 Filed 2-28-78; 8:45 am]

(Continued)
have not been considered. These are matters which would have to be resolved before the assignment could be made. See Bloomsburg, Pa., 34 FCC 2d 940 (1972); Attica-Warsaw, N.Y., 54 FCC 2d 1137 (1975).

[6712-01]

[47 CFR Part 76]

[Docket No. 21472]

"SATURATED" CABLE TELEVISION SYSTEMS

Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Extension of time.

SUMMARY: In response to a request by Counsel for the Public Broadcasting Service, and for good cause shown, a two week extension of time is granted to submit comments in response to the notice of proposed rulemaking in Docket 21472. This proceeding is concerned with problems associated with cable television systems that are required to carry more broadcast signals than they have capacity to carry.

DATES: Comments must now be received on or before March 9, 1978, and reply comments on or before April 10, 1978.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION:

Contact James A. Hudgens, Cable Television Bureau, 202-632-6468.

SUPPLEMENTARY INFORMATION:

Adopted: February 17, 1978.

Released: February 22, 1978.

In the matter of amendment of Part 76 of the Commission's rules and regulations (sections 76.59-76.63) with respect to "saturated" Cable Television Systems. *Order* (43 FR 3598).

1. In the notice of proposed rulemaking in the above-entitled proceeding, the dates originally designated for comments and reply comments were January 23 and February 22, 1978, respectively. However, requests for an extension of time were submitted by the Community Antenna Television Association and Viacom International, Inc. Good cause having been shown therefor, by Order of January 18, 1978, an extension of time was granted to the dates of February 23 and March 27, 1978.

2. Now a request for a further extension of time for a period of 2 weeks has been submitted by Counsel for the Public Broadcasting Service (Arent, Fox, Kintner, Plotkin & Kahn). In support thereof, petitioners state that the issues raised in the proceeding are more difficult and time-consuming than anticipated, and that the time is needed to finalize the preparation of the Comments and to permit needed consultation between house counsel and outside counsel. Additionally, petitioners state that the requested extension will permit PBS "to finish compiling programming data helpful to the Commission in its analysis of this question and requested in the Notice."

3. We note that we specifically stated our intention to expedite this proceeding in the Notice itself and that one extension already has been granted. However, in view of the considerations cited by petitioner, it appears that the Commission will benefit from the submission of the materials described by petitioners and that good cause has been shown for granting the requested extension.

Accordingly, *it is ordered*, That the dates for filing comments and reply comments in Docket 21472 are further extended to March 9 and April 10, 1978, respectively.

This action is taken by the Chief, Cable Television Bureau, pursuant to the authority delegated by Section 0.288 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION,
JAMES R. HOBSON,
Chief, Cable Television Bureau.

[FR Doc. 78-5401 Filed 2-28-78; 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.

[3410-16]

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

CADRON CREEK WATERSHEDS, ARK.

Intent To Prepare an Amplification to the Final Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an amplification to the final environmental impact statement is being prepared for the Cadron Creek Watersheds, Cleburne, Conway, Faulkner, Van Buren, and White Counties, Ark.

The amplification to the environmental impact statement concerns changes in plan elements after the final impact statement was filed with the Council on Environmental Quality. The sponsors of the project elected to eliminate one floodwater retarding structure to preserve a popular canoeing reach on the East Fork Cadron Creek.

The final environmental impact statement was filed with the Council on Environmental Quality on June 1, 1976. The Notice of Availability of final environmental impact statement was submitted to the FEDERAL REGISTER on April 16, 1976.

The Soil Conservation Service invites participation of agencies and individuals with expertise or interest in the preparation of the amplification to the final environmental impact statement. The amplification will be developed by Mr. M. J. Spears, State Conservationist, Soil Conservation Service, 5029 Federal Building, P.O. Box 2323, Little Rock, Ark. 72203, 501-378-5445.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83566, 16 U.S.C. 1001-1008.

Dated: February 9, 1978.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service, U.S. Department of Agriculture.

[FR Doc. 78-5286 Filed 2-28-78; 8:45 am]

[3410-16]

WATER RESOURCES PROJECT TYPE ACTIVITIES

Channel Modification Guidelines

AGENCY: Soil Conservation Service, Agriculture and Fish and Wildlife Service, Interior.

ACTION: Notice of Final Guidelines for Use of Channel Modification as a Means of Water Management in water resource project type activities of the Soil Conservation Service (SCS). The guidelines are not intended to have the force of rules or regulations, but are published for the information of the interested public.

SUMMARY: An interdisciplinary team of specialists from the Department of the Interior's Fish and Wildlife Service (FWS) and the Department of Agriculture's Soil Conservation Service has worked cooperatively over the past several months to develop the attached guidelines for channel modification. The guidelines are based on these professionals' own experienced judgment, plus the suggestions of many other interested Federal and State agencies, organizations, and individuals whose views were solicited. The heads of both agencies, Lynn A. Greenwalt and R. M. (Mel) Davis, have personally guided this effort and support the guidelines.

For the guidelines to be effective, reasoned judgment will be required among professional planners, biologists, and others. Compromises will need to be negotiated. We expect users of the guidelines to suggest refinements. After a reasonable period of use, we will review their effectiveness and rewrite them if the need is apparent.

The guidelines should be studied thoroughly and applied intelligently. In general, they provide that:

1. SCS and FWS will use an interdisciplinary planning process which permits a balancing of the need to both maintain a viable, naturally functioning ecosystem and provide for projected food and fiber, economic, and other social needs.

2. Measures other than channel work will be suggested, analyzed, evaluated, and accepted if channel work will cause measurable habitat losses and if other alternatives will contribute to project objectives with less damaging effects. Channel work normally will be a "last resort" measure.

3. Channel work will not be undertaken when it would destroy or modify critical habitat for endangered or threatened species.

4. Wetland types 3-20 will not be purposely drained, and any indirect drainage of these types will be avoided unless appropriate mitigation or compensation is provided. Types 1 and 2 will be evaluated as to their ecological importance and preservation strongly recommended in accordance with provisions in the guidelines.

5. The intent and spirit of the Federal Wild and Scenic Rivers Act and similar State legislation will be respected.

6. Important fish and wildlife habitat values will be maintained or enhanced. Conservation easements or other comparable means will be utilized wherever necessary to provide reasonable protection for wetlands subject to secondary drainage predicted to occur as a result of, or be facilitated by, channel modification.

EFFECTIVE DATE: March 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. F. Eugene Hester, Associate Director, Environment and Research, U.S. Fish and Wildlife Service, 202-343-5715.

Mr. Joseph W. Haas, Assistant Administrator for Water Resources, Soil Conservation Service, 202-447-4527.

SUPPLEMENTARY INFORMATION: On August 8, 1977, the Soil Conservation Service and the Fish and Wildlife Service published in the FEDERAL REGISTER (42 FR 40119) proposed guidelines for use of channel modification as a means of water management in water resource project type activities of the Soil Conservation Service. During the 37-day commenting period numerous comments were received from Federal agencies, State agencies, organizations, and individuals. All written comments were given consideration in developing the final guidelines. The full text of all comments received is on file and available for public inspection in: Room 5226, South Agriculture Building, Washington, D.C., and Room 849, 1730 K Street NW., Washington, D.C.

Accordingly, the following final guidelines are published for informational purposes.

Dated: February 24, 1978.

ROBERT L. HERBST,
Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

M. RUPERT CUTLER,
Assistant Secretary for Conservation, Research, and Education, Department of Agriculture.

CHANNEL MODIFICATION GUIDELINES

PREPARED BY

Department of the Interior, Fish and Wildlife Service

Department of Agriculture, Soil Conservation Service

CHANNEL MODIFICATION GUIDELINES

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CHANNEL MODIFICATION GUIDELINES

I. INTRODUCTION

A. Purpose

These guidelines are promulgated by the Soil Conservation Service (SCS) and the Fish and Wildlife Service (FWS) to guide their personnel in identifying when and where channel modification may be used as a technique for implementing water and related land resource projects. They will be used in the planning of all SCS projects or measures which qualify for either technical, financial, and/or credit assistance under the authorities for flood prevention projects, small watershed projects, and resource conservation and development projects. These program authorities contain provisions for maintaining and enhancing fish and wildlife resources as well as achieving other water management objectives.

B. Policy

It is the policy of SCS and FWS that care and effort will be made to maintain and restore streams, wetlands, and riparian vegetation as functioning parts of a viable ecosystem upon which fish and wildlife resources depend.

It is also the policy of SCS and FWS to use an interdisciplinary planning process which will permit a balancing of the need to maintain a viable, naturally functioning ecosystem and projected food and fiber, economic, and other social needs.

The application of these guidelines, the resource inventory, interpretation, and planning assistance provided by SCS and FWS will ensure identification and consideration of alternatives to channel modification.

C. Applicability

These guidelines become effective as of the date they are approved. They will be applied to: (1) All new planning starts; (2) all projects in the planning phase, unless SCS and FWS agree it is not important and feasible to apply the guidelines; (3) all projects approved for construction, (a) when supplements or revisions are prepared which would result in an increase in the amount or type of channel modification which would increase the potential adverse environmental impact; or (b) when SCS and FWS agree that: (i) important fish and wildlife habitat is involved and threatened; (ii) project modification is feasible; and (iii) project modification to minimize adverse environmental impact has not been accomplished as a result of reviews mandated by the National Environmental Policy Act or other congressional, Presidential, or Secretarial initiatives.

After the guidelines have been in use for a year or more, their effectiveness will be reviewed, and changes will be made if determined to be necessary. These guidelines may be terminated at the request of either agency.

II. BACKGROUND

Congress has recognized that erosion, floodwater, and sediment can cause damage in the watersheds of the rivers and streams of the United States. It has found that loss of life and damage to property constitute a menace to the national welfare and that the Federal Government should cooperate with States and their political subdivisions for the purposes of preventing such damages and of furthering the conservation, development, utilization, and disposal of water. In so doing, this action will also preserve, protect, and improve the Nation's land and water resources and the quality of the environment.

Congress has also recognized that rivers and streams, wetlands, and riparian vegetation constitute a valuable resource which is vital to the public interest in naturally functioning ecosystems, water transport, and maintenance of fish and wildlife populations. Dependent upon the situation, wetlands can serve as: (1) Natural flood detention areas; (2) sediment and debris traps; (3) water purifiers and in recycling nutrients; (4) groundwater recharge areas; (5) nursery areas for aquatic animal species; (6) important habitats for a wide variety of plant and animal species, some of which have been depleted to the point that their continued existence is endangered; and (7) areas which produce highly valuable crops of timber, fish, and wildlife.

High flows in rivers and streams and periodic overflow have significant value in creating and maintaining meandering channels and in cleansing and redistributing substrates. This action by water provides riffles, pools, or other habitat for fish spawning and rearing and production of aquatic invertebrates. It also provides diverse plant successional areas and other types of shoreline habitat that fulfill fish and wildlife food and cover requirements. However, it is also recognized that many areas adjacent to streams and wetlands are well-suited for and have a long history of agricultural and urban uses.

Channel modification, used in a sensitive manner, is one method that can be utilized in solving specific water management problems. It may be needed to restore a water course impaired or damaged naturally or through man's unwise use or management of adjacent or upstream lands. It may also be needed to provide a safe and healthy environment and for the maintenance of existing agricultural productivity. However, channel modification can cause serious damage to fish and wildlife resource values. In addition to the direct impacts on the stream and immediate environs, the practice has, on occasion, led directly or indirectly to major drainage of wetlands, clearing of bottomland forests for intensive agriculture, and increased flooding and siltation in downstream areas. Channel modification for flood control, drainage, and irrigation projects has often resulted in severe conflict with the function of the associated ecosystems, changing or reducing both the variety and abundance of fish and wildlife resources.

Because of the variety of values associated with water, it is incumbent upon the SCS and the FWS to continue to share their technical expertise to help ensure decisions which will result in the maximum benefits to assure long-term agricultural productivity and optimum environmental quality.

III. GUIDELINES

A. Alternatives

The guidelines for channel modification will be used when formulating alternative plans under the Water Resources Council's Principles and Standards. The planning process will include an inventory of resources, including fish and wildlife habitats and their geographic delineation. It will also identify appropriate means for minimizing adverse impacts on habitat values. Measurement of habitat values will be determined on a case-by-case basis in accordance with habitat evaluation procedures promulgated by FWS and developed jointly with SCS.

Alternative plans will be formulated to: (1) Emphasize environmental quality; (2) optimize national economic development; and (3) provide varying mixes of the components of the environmental quality and national economic development objectives. For each alternative plan, there will be a display or accounting of relevant beneficial and adverse effects. A comparison of the displays will identify trade-offs between the environmental quality and economic development objectives. Within this framework and in compliance with the requirements of the National Environmental Policy Act (NEPA), equal consideration will be given to environmental and economic and technical aspects in the decisionmaking process.

In compliance with the mandates of NEPA and the Water Resources Council's Principles and Standards, the FWS will assist the SCS develop, evaluate, and recommend alternatives, if any, to channel modification when it is expected to cause, directly or indirectly, measurable losses of fish and wildlife resources. Channel modifications will not be considered if a practical alternative exists. A practical alternative is one which meets all of the following tests: (1) is consistent with the Water Resources Council's Principles and Standards; (2) makes a significant contribution to project objectives; and (3) results in less damage to fish and wildlife habitat. Thus, channel modification will normally emerge as the last resort measure.

The following three broad types of alternatives will be considered singly or in combination:

1. Soil and Water Conservation practices.

2. Nonstructural—nonstructural measures may include, but are not limited to, land use regulation, land acquisition the maintenance of aquatic areas, floodplain zoning, floodproopfing existing buildings, flood forecasting, flood warning, flood hazard information, flood insurance, tax adjustments, emergency assistance, and relocation of properties and people.

3. Structural—structural alternatives to channel modification include, but are not limited to, dams, floodways, dikes, levees (including set back levees), flood walls, pumping plants, diversions, and wetland development, maintenance, and restoration.

B. Types of channel modification

Channel modification is defined in these guidelines to include actions such as riprapping, selective snagging, clearing and snagging, widening, deepening, realignment, and lining, listed generally in order of ascending impact on fish and wildlife resources.

1. Selective Snagging—The selective removal of obstructions from a channel to increase its capacity to convey water. This includes, but is not limited to, the removal of downed timber and accumulations of debris or obstructions.

2. Clearing and Snagging—The removal of obstructions from the channel and stream banks, including the removal of vegetation and accumulations of bedload material, to increase its capacity to convey water. It may include the removal of sediment bars, drifts, logs, snags, boulders, piling, piers, headwalls, and debris.

3. Riprapping—The placement of irregular permanent material such as rock in critical areas along the watercourse to protect the earth materials against excessive erosive forces.

4. Widening—The overall widening of a channel to restore or increase its capacity to convey water. This usually involves clearing, snagging, and excavation of a portion of the channel side slope(s). Where practical, widening is performed on one side only with appropriate consideration given to alternating from one side to the other.

5. Deepening—The overall deepening of a channel to increase its capacity to convey water and/or provide drainage. Deepening usually involves clearing or snagging and excavating of a portion of the channel bottom and the channel side slope(s).

6. Realignment—The construction of a new channel or a new alignment and may involve the clearing, snagging, widening, and/or deepening of the existing channel where the new alignment coincides with the existing channel. It may include straightening the alignment to restore or increase the capacity of the channel to convey water.

7. Lining—Placement of a nonvegetative protective lining over all or part of the perimeter of a channel to prevent erosion or to increase the capacity of the channel to convey or conserve water.

C. Channel modification as an alternative

The following criteria will be utilized in the planning process for determining when channel modification can be considered an alternative. If used, channel modification will be the minimum required, either alone or in combination with other measures. It will be accomplished using the least damaging construction techniques and equipment in order to retain as much of the existing characteristics of the channel and riparian habitat as possible. Construction practices may include, but are not limited to, such things as seasonal construction, minimum clearing, reshaping spoil, limiting excavation to one bank (on alternating sides where appropriate), and prompt revegetation of disturbed areas.

Channel modification may be considered as an alternative for project purposes for which the SCS is currently authorized by law and which are in conformance with agency (SCS) policy and regulations, provided the modification is designed to resolve specific problems and would not cause directly or indirectly any of the following to occur:

1. Jeopardize the continued existence of endangered species and threatened species designated or formally proposed[1] by the destruction or modification of habitat or such species which is determined to be critical under the Endangered Species Act of 1973 or species similarly classified under law of the State(s) in which the project is located.

2. Result in restricted access to use of streams or stream segments developed specifically for recreation of fish and wildlife use by the general public.

3. The intent or purpose is to drain or otherwise alter wetland types 3 through 20[2] or the result of the modification would be to indirectly alter wetlands types 3 through 20 and provisions for appropriate mitigation or compensation by establishment of similar habitat values in the project area are not provided. Wetland types 1 and 2 with important fish and wildlife habitat values will be treated in accordance with item 3 below, and their preservation will be strongly recommended when they are adjacent to types 3 through 20 or are needed to maintain a balanced aquatic or semi-aquatic ecosystem.

Also, channel modification will not be considered as an alternative unless it can be accomplished with little or no direct or indirect adverse[3] effect on:

1. Stream or stream segments now designated or undergoing study under the Wild and Scenic Rivers Act or officially designated pursuant to other Federal of State(s) legislative actions for their important natural, esthetic, or recreational values.

2. Streams located in or flowing through or contiguous to established wilderness areas, parks, refuges, or other areas set aside pursuant to Federal of State(s) legislative actions for fish and wildlife esthetic or recreational values.

3. Important fish and wildlife habitat values, including riparian habitat, in the project impact area, State, or Nation after providing for all appropriate mitigation, compensation, or preservation measures. Conservation easements or other comparable means will be utilized wherever necessary to provide reasonable life of project protection for wetlands or riparian areas subject to secondary drainage predicted to occur as a result of, or be facilitated by, channel modification. (Measurement of habitat values will be determined on a case-by-case basis in accordance with habitat evaluation procedures to be promulgated by FWS and developed jointly with SCS.)

IV. COORDINATION AND INTERACTION

The FWS and the SCS recognize that the application of the above guidelines can most effectively be accomplished through cooperative effort during all planning phases of a water resource project. The FWS and the SCS will work cooperatively with State fish and wildlife agencies to inventory and assess the fish and wildlife resources and to plan alternatives, enhancements, replacement, or necessary mitigation measures.

The level of effort to be devoted by FWS to each watershed project will be proportional to the value of the resources and expected impact on fish and wildlife resources. If FWS determines at any stage of planning that it cannot, for any reason, participate, it will so notify SCS in writing stating reasons for discontinued participation. Even though FWS discontinues participation in planning, they will eventually, as prescribed by law, become involved with reviewing and commenting on the watershed plan. In such instances, FWS will not oppose the project plan on the basis of channel modifications unless it is clearly evident that the plan is not in conformance with the provisions of these guidelines after consultation with SCS determining this to be the case.

The following procedures will be used in the planning of water resource projects. The coordination identified is between the field levels of FWS and SCS; however, both agencies recognize that planning will always involve State fish and wildlife agencies as well as the interested public and sponsoring agencies at all stages throughout the planning process.

[1] Applicable only during a 6-month period immediately following the date a proposal is published in the FEDERAL REGISTER by FWS in compliance with the Endangered Species Conservation Act of 1973.

[2] Wetland types as described in FWS Circular No. 39 or subsequent publications.

[3] Rule of reason must be used in applying these guidelines and determining the actual net effects and their significance at the field level considerering the value of the resource and importance of the project objectives.

COORDINATION OF FIELD LEVEL PLANNING*

Process	SCS action	FWS action
Preapplication	Potential application under consideration. Notifies FWS that potential application is being considered and issued invitation to meetings.	Participate in meetings.
	Assists sponsors in developing information when appropriate. (Normally requires from one to several days.) Request from FWS available fish and wildlife information and viewpoints concerning potentials for and impacts of a probable project.	Furnishes available information and FWS viewpoint concerning potentials for and impacts of a probable project. If requested, participates jointly with SCS and State fish and wildlife studies needed and report findings as may be required. (Field level letter.)
Application	Receives application. Notifies FWS in writing that application has been received and when field examination is to begin. Issues invitation to FWS to participate in all meetings and in study and evaluation of available information. (Field examination may require a few days to several weeks.).	Participates in meetings.
	Initiates field examination and assembles available information, coordinates study and evaluation of available information and data. Begins environmental assessment.	Participates in field examination. Assembles and furnishes available fish and wildlife information and data. Participates in study and evaluation of available information and data and in identification of problems and study needs and potential solutions worthy of further study.
	Identifies problems and needs, potential solutions, and broad alternatives worthy of further study. Request FWS to work cooperatively with SCS and State fish and wildlife agency in any special studies required in this step.	Works cooperatively with SCS and State fish and wildlife agency in any special studies required and in preparing an appropriate report.
	Prepares field examination report (includes pertinent fish and wildlife information from FWS) and provides copy to FWS.	Provides inputs (letter report) for the field examination report.
	Requests FWS to participate in developing a plan of study. Prepares the study plan.	Participates with SCS in developing a plan of study. FWS will advise as to scope and detail of specific studies needed, capability of FWS to perform studies, and its desire to participate in design of any contracts to secure necessary information.
	Requests planning authority (submits views of FWS with request for planning authorization).	
Planning	Receives notice of planning authorization. Notifies FWS in writing. Initiates and coordinates Preliminary Investigation (PI) and continues environmental assessment. Notifies FWS in writing. (PI may require from several weeks to 2 years.).	Participates in meetings and preparation of joint FWS-State fish and wildlife agency-SCS fish and wildlife inventory, assessment, base line data, and report.
	SCS initiates preparation of Pi report and update of the study plan. Requests FWS participation in PI and update of plan of study..	Furnishes additional inputs to problems, needs, alternatives and impacts as the PI process progresses and jointly makes recommendations for mitigation, compensation, and enhancement. Furnishes inputs for the PI report and updating of study plan.
	Sends PI report to FWS and others	Participates with SCS to review the PI report with the public.
Detailed planning	Coordinates the detailed planning stage and continuation of the environmental assessment. Notifies FWS that detailed planning is to commence and issues invitation to participate in detailed planning and in meetings.	Participates with SCS and others in detailed planning of alternatives and the components. Works cooperatively with State fish and wildlife agency and SCS to formulate the alternatives and to assess fish and wildlife impacts. Works cooperatively with SCS and State in preparation of recommendations for mitigation, compensation, and enhancement for initial draft plan and, when prepared, an EIS. Participates in meetings. Provides detailed report in accordance with Fish and Wildlife Coordination Act and section 12 of Pub. L. 82-566.
Prepares initial draft plan and, when required, and EIS. Initiates local	field review and issues an invitation to FWS to participate in this review. Provides FWS with initial draft plan and an EIS, if prepared.	Provides review comments on initial draft and participates in local field review.
Review (formal)	Prepares a draft plan and EIS, if required, and circulates for interagency review.	Provides commends to Interior and works with SCS in an attempt to resolve issues, if warranted.
	SCS prepares final plan and EIS, if required. Forwards plan and EIS through system for approval and authorization.	Review plan and EIS according to FWS and Interior instructions.
Operations	Receives notice of authorization for installation. Notifies FWS. (Regional and area offices.) Prepares construction plans and invites FWS to review them.	Reviews pertinent construction plans.
	Notifies FWS of supplement when the channel modification guidelines are applicable. (See page 2.) Prepares supplemental plans when necessary and circulates for local field review.	Participates in formulating supplemental plan when the channel modification guidelines are applicable. Same involvement as in planning and provides inputs for supplemental plan. Also provides comments on supplemental plan when circulated for local field review.
	Forwards supplemental plan for approval. Provides FWS copy of supplemental plan.	
Maintenance	Advises FWS and State fish and wildlife agency of scheduled maintenance inspections during the life of the project.	Participates in maintenance inspections at FWS discretion. If appropriate, makes recommendations for changes in O&M agreement if necessary to ensure that proper maintenance is accomplished.

*All steps apply to planning for small watershed projects. Appropriate steps will be followed for Pub. L. -534 and Resource Conservation and Development measures planning.

NOTES: 1. SCS notifies FWs when planning is suspended, project action terminated, or other stop actions are taken.

2. The level of effort to be devoted by the FWS to each watershed project will be proportional to the value of the resources and expected impact on fish and wildlife resources. If FWS determines at any stage of planning that it cannot, for any reason, participate, it will so notify SCS in writing stating reasons for discontinued participation.

V. RESOLUTION OF ISSUES

General

It is recognized that issues may develop which cannot be resolved at the field level. When issues arise, it will be the practice of the FWS and the SCS to refer such cases and issues to the next higher respective administrative level for resolution and ultimately, if necessary, to the Secretaries of Agriculture and Interior. The Secretary of Agriculture will seek the advice and counsel of the Secretary of the Interior in reaching his decision. Consultation between the two agencies will, at each level, occur throughout the decision process.

Procedure

1. Most of the problems in applying the guidelines will be identified at the field planning level. When this occurs, the SCS Planning Staff Leader will consult directly with the FWS Field Supervisor (Ecological Services) and attempt to resolve the issue.

2. Should te SCS Planning Staff Leader and the FWS Area of Field Supervisor be unable to reach agreement, the issue should be referred and coordionated as follows:

USDA IN CONSULTATION WITH USDI

State Conservationist, SCS	Regional director and/or area manager, FWS as appropriate.
Administrator, SCS	Director, FWS.
Assistant Secretary for Conservation, Research, and Education.	Assistant Secretary for Fish and Wildlife and Parks.
Secretary of Agriculture	Secretary of the Interior.

The decision on whether channel modification will be part of a project plan shall rest with the Secretary of Agriculture. If disagreement still exists at the Secretary's level, the FWS views and recommendations will be appended to the project plan.

At all levels in the decision process, the desires and needs of the local sponsors, environmental groups, State and Federal agencies, and interested public will be taken fully into account.

Dated: February 21, 1978.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

Dated: February 22, 1978.

R. M. DAVIS,
Administrator,
Soil Conservation Service.

[FR Doc. 78-5338 Filed 2-28-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket 22387; Order 78-2-112]

INVESTIGATION OF AIR EXPRESS RATES

Order to Terminate Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 23rd day of February 1978.

The Board instituted this investigation by Order 70-7-109, dated July 23, 1970, to determine the lawfulness of the air express rates and charges and the revenue divisions, both prospectively and retrospectively, of such rates and charges between REA Express, Inc. (REA) and the direct air carriers participating in the air express agreements. Concurrently, the Board instituted a separate investigation in Docket 22388 into the need for the continuation of REA as an exclusive express agent of the airlines.[1] In the latter investigation, the Board ultimately found that REA's exemption authority to conduct air express service should be terminated and authorized REA to operate as a domestic air freight forwarder.[2] On the other hand, we have never completed the investigation of air express rates and charges, which is the subject of this order.

By Order 74-5-23, dated May 6, 1974, the Board determined, first, that its decision in Docket 22388 to terminate REA's exemption authority had mooted issues in the rates investigation as far as those issues concerned prospective lawfulness, and, second, that the record in the rates case was not adequate to decide the merits of REA's contention that a retrospective adjustment should be made in its favor to the divisions of air express revenues.[3] Nevertheless, the Board, as a last resort, gave REA an opportunity to meet with the airlines, under Board auspices, for the purpose of assembling factual materials and negotiating an agreement on the issue of retrospective divisions.

The parties failed to take advantage of this opportunity. REA continued its efforts to obtain judicial reversal of the Board's findings in both the service and rates cases, and the airlines maintained their position that the Board did not have the power to oversee retrospective adjustments in the air express revenue divisions.[4] Thus, there was no mutually agreeable basis on which even to begin negotiations.

The dispute was soon eclipsed by the financial collapse of REA. On February 18, 1975, REA filed a petition in bankruptcy. It was so adjudged on November 6, 1975.[5]

Under these circumstances, we see no further purpose to be served by leaving this matter open.

Accordingly, pursuant to the Federal Aviation Act of 1958 as amended,

It is ordered, That: 1. The investigation in Docket 22387 be terminated; and

2. Copies of this order shall be served upon all parties to Docket 22387; the Honorable John J. Galgay, Bankruptcy Judge; and C. Orvis Sowerwine, Trustee in Bankruptcy.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[6]
Secretary.

[FR Doc. 78-5394 Filed 2-28-78; 8:45 am]

[6320-01]

[Docket 32118; Order 78-2-120]

PAN AMERICAN WORLD AIRWAYS, INC.

Order of Suspension and Investigation Regarding Proposed Increased Excess Baggage Charges

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 13th day of February 1978.

By tariff revisions[1] filed on December 23, 1977, and marked to become effective on March 3, 1978, Pan American World Airways, Inc. (Pan American) proposes to modify excess baggage charges in international markets. Over and above the two bags carried free, Pan American proposes to limit the number of pieces of excess baggage acceptable at currently effective charges to two pieces and to increase the charges for more than four pieces. For example, the following table shows a comparison for the New York-London market.

[1] Express Service Investigation, Order 70-7-110.

[2] Orders 73-12-36, dated December 7, 1963; 75-4-54, dated April 9, 1975; and 75-5-98, dated May 23, 1975; affirmed 524 F. 2d 54 (C.A. 2d 1975); cert. denied, 426 U.S. 906.

[3] On the issue of retrospective adjustment of revenues, the administrative law judge held that the rates and divisions he found reasonable for the future showed that the airlines, rather than REA, had been underpaid.

[4] See Order 74-6-117, dated June 26, 1974, denying REA's motion to stay Order 74-5-23, Supra, pending judicial review.

[5] Bankruptcy No. 75-B-0251 et seq., United States District Court for the Southern District of New York.

[6] All Members concurred.

[1] Revisions to Air Tariffs Corporation, Agent, CAB No. 55. These tariffs were originally scheduled to become effective on February 6, 1978. Pan American requested and was granted until January 25 in file an answer to the complaint and postponed the effectiveness of its filing until March 3, 1978.

Market	Excess baggage charges per piece		
		Present	Proposed
New York to London	2 bags free	Free	Free.
	2 bags at	$35 each	$35 each.
	Additional pieces at	$35 each	$105 each.
	Oversized pieces at	$35 to $105 plus $35 for each 10 kg. in excess of 45 kgs.	$105 each.

In effect travellers will be permitted the current free baggage allowance plus two pieces of excess baggage, at currently applicable charges as at the present.[2] Additional pieces of baggage tendered beyond the two excess pieces will be assessed charges ranging between 300 and 400 ercent above the current excess baggage charges.

In support of the proposal, Pan American asserts that: it has been experiencing continuing problems with the volume of excess baggage that passengers have presented at check-in time and, because of aircraft volume and weight restraints, it has unable to board all the baggage tendered; the proposal is a relatively inrestrictive response made essential by some passengers abusing baggage privileges by tendering twenty, thirty or more pieces, which preclude other passengers or freight shippers from usiung Pan American's service; the movement of large numbers of pieces at rates considerably below regular freight charges gives the tenderer an unfair preference over other shippers and dilutes the economic support for the operaton; for the months of September and October and for the first three weeks of November, 1977, 493 bags were not loaded on the same flight as the related passengers departing from New York; limiting the applicability of current excess baggage charges to only two excess pieces will only affect a small percentage of passengers; the increased charges are set to approximate the level of freight charges if the baggage were sent as cargo, assuming 35 kilograms per piece; the proposal is designed to discourage the tender of inordinate amounts of excess baggage, while not imposing a requirement that a passenger ship baggage as freight, a requirement that could create a need for both the passenger and the carrier to conform to specialized customs and other regulations related to international cargo shipments; the solution of tendering all excess baggage (beyond a specified number) as freight is too restrictive for international travel because customs clearance and other procedures are cumbersome and may involve delays; Pan American has not designed the rates to put couriers out of business; the costs of extraordinary amounts of excess baggage are best measured by the revenues lost by the displacement of freight traffic; to maintain simpliciuty and efficiency in passenger handling procedures, Pan American is proposing that essentially the same rules and regulations govern baggage allowances and assessment of excess charges throughout its system; and the proposal would establish excess baggge rates at levels that will discourage the use of the baggge system to carry freight under the guise of personal baggage.

A complaint requesting suspension pending investigation of this proposal has been filed by the DHL Corp. (DHL), an air courier service. Additionally, answers in support of the complaint have been filed by the Government of Guam, the Air Courier Conference of America (ACCA), and another courier service, Purolator Sky Courier, Inc. (Purolator). These complaints allege, among other things, that: the proposal is designed to put courier companies out of business by raising excess baggage charges to exorbitant levels; the scheduled carriers are attempting to seize upon the experience of air couriers and eliminate competition through economic sanctions as evidenced by the magnitude of the increases; the direct carriers are trying to force courier companies out of business because many of these carriers will soon have unlimited cargo rights and want courier business for themselves; the fact that Western Air Lines, Inc. and United Air Lines, Inc. have instituted similar excess baggage restrictions indicates this proposal is in concert with the actions of others and constitutes an antitrust violation; the residents of Pago Pago and Guam have no alternative air service, so this proposal will inflict particular harm upon their residents and businesses; the carrier cites no cost data in support of its proposal; the three-month study data is not relevant to passenger traffic and related baggage between the U.S. and Guam, and offers no support for the proposal in connection with Guam traffic; because passenger fares between Guam and U.S. are so high, tourists travelling between the two points remain for a substantial period, and the longer a person expects to be away from home, the more baggage must be taken along; the carrier should not be permitted to abuse its monopoly position in the U.S.-Guam market by forcing passengers to bear the proposed massive charges; contrary to expectations, the effect of such charges could be to dampen both tourism and business travel between U.S. and Guam; the proposed levels are too high because excess baggage is far less costly to process than freight—no storage, no waybill paperwork, no advertising, no sales commissions, no additional handling costs, and a passenger is paying a fare; the sole justification for these significant increases is a survey conducted at one terminal over an eleven-week period and the results do not support a claim of significant inconvenience to the carrier or passengers; the justification submitted is inadequate in that it lacks data on costs and revenues as required by section 221.165 of the Board's Economic Regulations; and the carriers will be able to engage in rebating and other forms of favoritism by not charging for all excess baggage.[3]

The Board finds that Pan American's proposal may be unlawful and should be investigated. The board further concludes that it should be suspended pending investigation.[4]

[2] A third free bag is permitted if it can be carried aboard and stowed in the passenger compartment. Oversized pieces are charged at the same rate as excess baggage.

[3] The Board has also received letters of protest from businesses and other courier services complaining about the magnitude of Pan American's proposed increase and its severe impact upon their requirements or business services.

[4] In view of the similarity of the issues, this investigation will be consolidated with that covering domestic and overseas transportation, Docket 32118. See Order 78-2-70.

It appears that the proposed increases could have a severe impact on passengers. The carrier makes no attempt to support the increases on the basis of costs of service. Pan American supports its proposal by a survey undertaken at one terminal for a consecutive period of eleven weeks. In our opinion, this survey alone does not support or justify such substantial increases at New York or throughout the carrier's system. It shows that about 493 bags did not accompany passengers during the period—an average of only 6.4 bags per day. Admittedly any baggage not loaded due to capacity constraints poses a problem; and we are aware that in certain markets very large amounts of goods are carried as excess baggage. Certainly, the Board can understand that something must be done in situations where twenty, thirty, or more pieces of excess baggage are tendered to the detriment of service for other baggage or freight. However, Pan American has not sufficiently justified this proposal. The carrier has submitted no evidence that the charges should be applied systemwide and that the problem cannot be localized; that the average excess bag weight 35 kilograms (77 pounds);[3] or that the proposed charges are in any way cost-related. Therefore, we conclude that the proposal may be unlawful and should not be permitted to become effective.

The Board believes that a satisfactory resolution may be reached without a formal hearing. Consequently, Pan American may submit additional justification in this docket by February 24, 1978, and a conference will be held on March 3, 1978, between Board staff and interested persons for the purpose of seeking a mutually satisfactory resolution of this problem.

Accordingly, pursuant to sections 102, 204(a), 403, 404, 801, and 1002 of the Federal Aviation Act of 1958:

It is ordered, That: 1. An investigation be instituted to determine whether the provisions set forth in Appendix A hereof, and rules, regulations, or practices affecting such provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to take appropriate action to prevent the use of such provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, the tariff provisions specified in Appendix A are suspended and their use deferred from March 3, 1978, to and including March 2, 1979, unless otherwise ordered by the Board, and that no changes be made in them during the period of suspension except by order or special permission of the Board;

3. Except to the extent granted here, the complaint of DHL Corporation in Docket 31948 is dismissed;

4. The investigation instituted here is consolidated into Docket 32118;

5. A conference will convene in room 1002N, 1875 Connecticut Avenue NW., Washington, D.C. 20428, on March 3, 1978, to explore the issues raised in this order. Pan American may submit additional justification in support of its proposal by February 24, 1978, to be filed in this Docket and served upon all parties to Docket 32118. The conference will be presided over by a Board staff member who will report the results to the Board.

6. This order shall be submitted to the President[4] and shall become effective on March 3, 1978; and

7. Copies of this order shall be filed in the applicable tariffs and served upon Pan American World Airways, Inc., DHL Corp., the Air Courier Conference of America, the Government of Guam, and Purolator Sky Courier, Inc., which are made parties to Docket 32118.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[5]
Secretary.

APPENDIX A.—*Tariff CAB No. 55, issued by Air Tariffs Corp., Agent*

On 27th Revised Page 46-A—

1. The parenthetical expression "(Not applicable to PA)" in Rule No. 16(V)(3)(c).

2. The Exception to subparagraphs (a), (b) and (d) of Rule No. 16(V)(3) and the Exception to that Exception.

[FR Doc. 78-5395 Filed 2-28-78; 8:45 am]

[3510-22]

DEPARTMENT OF COMMERCE

National Oceanic and Atomospheric Administration

COD FISHERY

Closure of the Directed Commercial Fishery for Cod on Georges Bank and in Southern New England Waters

Notice is hereby given pursuant to 50 CFR 651.8(a)(2) (See FEDERAL REGISTER, December 30, 1977, page 65187 and FEDERAL REGISTER, January 4, 1978, page 778) that the Assistant Administrator for Fisheries has determined that 50% of the quarterly allocation of 4,163 metric tons of cod (see FEDERAL REGISTER, December 30, 1977, page 65187) for the commercial fishery for Georges Bank and Southern New England has been taken. As of February 15, 1978, statistics maintained by the National Marine Fisheries Service indicate that 2,800 metric tons of the 4,163 quarterly allocation have been taken on Georges Bank and in Southern New England. Therefore, the season for taking cod in a directed commercial fishery for cod on Georges Bank and in Southern New England by persons and vessels subject to the jurisdiction of the United States shall terminate at 0001 hours, March 1, 1978. This restriction shall remain in effect until 2400 hours, March 31, 1978. Between March 1 and March 31, 1978, inclusive, no person or vessel shall land cod from Georges Bank and Southern New England in amounts greater than the following:

(1) For vessels under 50 gross registered tons: 2,000 pounds landed weight of cod per day of fishing or 10 percent by weight of all other fish on board per trip, whichever is greater.

(2) For vessels of 50–125 gross registered tons: 2,500 pounds landed weight of cod per day of fishing or 10 percent by weight of all other fish on board per trip, whichever is greater.

(3) For vessels over 125 gross registered tons: 3,000 pounds landed weight of cod per day of fishing or 10 percent by weight of all other fish on board per trip, whichever is greater.

For vessels making trips of more than three days, two days will be deducted for steaming time. For example, on a seven day trip, a vessel of 126 gross registered tons may land 15,000 pounds of cod or 10 percent by weight of all other fish on board, whichever is greater. (Seven days minus two days for steaming equals five days at 3,000 pounds per day or 15,000 pounds).

(4) For vessels of any size: using fixed gear (hooks or gillnets) 16,000 pounds per week beginning on Sunday and ending on Saturday.

Fishermen are also reminded that during March, April, and May, certain spawning areas are closed to bottom gear. See the notice appearing on page.

Issued at Washington, D.C. and dated February 24, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Services.

[FR Doc. 78-5420 Filed 2-28-78; 8:45 am]

[3510-22]

COD FISHERY

Closure of the Directed Commerical Fishery for Cod in the Gulf of Maine

Notice is hereby given pursuant to 50 CFR 651.8(a)(2) (See FEDERAL REG-

[3] Data in the Transatlantic, Transpacific and Latin American Service Mail Rates Investigation, Docket 26487, indicate an average weight per bag from 26.9 to 30.3 pounds.

[4] This order was submitted to the President on February 14, 1978.

[5] All Members concurred.

ISTER, December 30, 1977, page 65187 and FEDERAL REGISTER, January 4, 1978, page 778) that the Assistant Administrator for Fisheries has determined that 50% of the quarterly allocation of 1,250 metric tons of cod (see FEDERAL REGISTER, December 30, 1977, page 65187) for the commercial fishery in the Gulf of Maine has been taken. As of February 15, 1978, statistics maintained by the National Marine Fisheries Service indicate that 719 metric tons of the 1,250 ton quarterly allocation have been taken in the Gulf of Maine. Therefore, the season for taking cod in a directed commerical fishery for cod in the Gulf of Maine by persons and vessels subject to the jurisdiction of the United States shall terminate at 0001 hours, March 31, 1978.This restriction shall remain in effect until 24 hours, March 31, 1978. Between March 1 and March 31, 1978 inclusive, no person or vessel shall land cod from the Gulf of Maine in amounts greater than the following:

(1) For vessels under 50 gross registered tons: 2,000 pounds landed weight of cod per day of fishing or 10 percent by weight of all other fish on board per trip, whichever is greater.

(2) For vessels of 50–125 gross registered tons: 2,500 pounds landed weight of cod per day of fishing or 10 percent by weight of all other fish on board per trip, whichever is greater.

(3) For vessels over 125 gross registered tons: 3,000 pounds landed weight of cod per day of fishing or 10 percent by weight of all other fish on board per trip, whichever is greater.

For vessels making trips of more than three days, two days will be deducted for steaming time. For example, on a seven day trip, a vessel of 126 gross registered tons may land 15,000 pounds of cod or 10 percent by weight of all other fish on board, whichever is greater. (Seven days minus two days for steaming equals five days at 3,000 pounds per day or 15,000 pounds).

(4) For vessels of any size: using fixed gear (hooks or gillnets) 16,000 pounds per week beginning on Sunday and ending on Saturday.

Issued at Washington, D.C. and dated February, 24, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-5421 Filed 2-28-78; 8:45 am]

[3510-22]

NEW ENGLAND GROUNDFISH SPAWNING AREAS

Closed to Bottom Gear

Persons and vessels subject to the jurisdiction of the United States are reminded that during the months of March, April, and May two areas off Cape Cod and Georges Bank are closed to bottom-tending trawls. These two closed areas are set forth in 50 CFR, Part 651 (See FEDERAL REGISTER of June 10, 1977 at page 29877, continued in effect by the emergency regulations promulgated in the FEDERAL REGISTER on December 30, 1977, at page 65186 and repromulgated in the FEDERAL REGISTER on February 13, 1978).

The regulation governing these closed areas is:

Section 651.5 *Closed areas.* (a) It shall be unlawful to use fishing gear other than pelagic fishing gear (i.e. purse seines or true midwater trawls using midwater trawl doors incapable of being fished on the bottom) during March, April, and May in areas bounded by straight lines connecting the following coordinates in the order listed.

(1) 69°55′ W., 42°10′ N.; 69°10′ W., 41°10′ N.; 68°30′ W., 41°35′ N.; 68°45′ W., 41°50′ N.; 69°00′ W., 41°50′ N.

(2) 67°00′ W., 42°20′ N.; 67°00′ W., 41°15′ N.; 65°40′ W., 41°15′ N.; 65°40′ W., 42°00′ N.; 66°00′ W., 42°20′ N.

(b) The provisions of paragraph (a) of this section shall not apply: (1) To vessels that fish in area (1) with hooks having a gape of not less than 1.18 inches (3 cm); and (2) to vessels that fish in either area (1) or (2) or both with: (i) Pot gear designed to take lobster; or (ii) dredges designed to take scallops.

(c) It shall be unlawful for any person fishing in the above areas to attach any protective device to pelagic fishing gear or to employ any means that would, in effect, make it possible to fish for demersal species.

Issued at Washington, D.C., and dated February 24, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-5422 Filed 2-28-78; 8:45 am]

[3510-22]

MARINE MAMMALS PERMIT

Receipt of Application

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407); and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: (a) Name—Mr. Michael B. Demetrius, President, Marineworld-Africa USA; (b) Address—Marine World Parkway, Redwood City, Calif. 94065.

2. Type of permit: Public Display.

3. Name and number of animals: Atlantic bottlenosed dolphins (*Tursiops Truncatus*), 10.

4. Type of activity: To take by capture and maintain for public display.

5. Location of activity: Copanio Bay, Rockport, Tex.

6. Period of activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Fla. 33702; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, Calif. 90731.

Dated: January 7, 1978.

ROLAND FINCH,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc. 78-5310 Filed 2-28-78; 8:45 am]

[3510-22]

SURF CLAM FISHING DAY DESIGNATION AND CHANGE

Public Hearings on Administrative Procedures

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Announcement of Public hearings.

SUMMARY: Three public hearings will be held by the Northeast Region, NMFS, in conjunction with the Mid-Atlantic Fishery Management Council to determine the procedure by which

surf clam fishing vessel owners or operators may change the fishing days designated by their permits. This change could only be accomplished during certain times of the year, and must be requested in writing, under the present proposal. Alternative reduction in effort systems, i.e., fishing on one or three days will also be discussed.

DATES: The hearings will be held March 7, March 9, and March 10, 1978. See supplementary information below.

ADDRESS: The hearings will be held in Philadelphia, Pa.; Ocean City, Md.; and Red Bank, N.J. See supplementary information below.

FOR FURTHER INFORMATION CONTACT:

William G. Gordon, Regional Director, National Marine Fisheries Service; 14 Elm Street; Gloucester, Mass. 01930, telephone 617-281-3600.

SUPPLEMENTARY INFORMATION: Notice is hereby given that there will be public hearings to receive testimony concerning the administrative procedure to be used by the National Marine Fisheries Service and surf clam boat owners and operators to change the designated fishing days on vessel permist. A number of comments were received in response to the final surf calm regulations suggesting that fishermen be given greater flexibility in choosing their authorized fishing days when fishing effort was reduced by the Regional Director. The purpose of these hearings will be to receive public comment on the National Marine Fisheries Service proposed system and to investigate alternative systems for future effort reductions to three, two, or one fishing days.

The National Marine Fisheries Service proposes to designate two 30-day periods each year during which surf clam vessel owners and operators may make a written request of the Regional Director to change the two authorized fishing days shown on their permits. Within 45 days of receipt of a written request a new permit designating the requested days will be issued by certified mail. Until a new permit has been received, the fishing days designated in the old permit will remain in force. Upon receipt of the replacement permit, the vessel owner or operator will be required, within ten days, to return the old vessel permit by certified mail to the National Marine Fisheries Service Regional Office, 14 Elm Street, Gloucester, Mass. 01930.

Three hearings on this proposal will be held from 7:30 to 10 p.m. at the following locations:

MARCH 7, 1978

Sheraton Airport Inn, Airport Exit off I-95, Philadelphia, Pa. 19153.

MARCH 9, 1978

Sheraton Fontainebleau Inn, 10100 Coastal Highway, Ocean City, Md. 21842.

MARCH 10, 1978

Molly Pitcher Inn, Route 35, Red Bank, N.J. 07701.

For further information, contact Mr. William G. Gordon, Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, Mass. 01930, telephone 617-281-3600.

Signed at Washington, D.C. this 24th day of February, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-5423 Filed 2-28-78; 8:45 am]

[3510-04]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchases from the National Technical Information Service (NTIS), Springfield, Va. 22161 for $4 ($8 outside North American Continent). Requests for copies of patent applications must include the PAT/APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF AGRICULTURE, Research Agreements and Patent Branch, General Services Division/Federal Building, Agricultural Research Service, Hyattsville, Md. 20782.

Patent Application 835,104: Dust Control During Grain Processing Operations; filed Sept. 21, 1977.

Patent Application 837,489: Soil Stabilization Method; filed Sept. 28, 1977.

Patent Application 837,931: Biodegradable Starch-Based Films; filed Sept. 28, 1977.

Patent Application 840,423: Production of Homodeoxyharringtonine and Other Cephalotaxine Esters by Tissue Culture; filed Oct. 7, 1977.

U.S. DEPARTMENT OF COMMERCE, National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161.

Patent Application 860,799: Method and Apparatus for Implementation of the CMAC Mapping Algorithm; filed Dec. 15, 1977.

U.S. DEPARTMENT OF TRANSPORTATION, Patent Counsel, 400 7th Street SW., Washington, D.C. 20590.

Patent 4,058,911: Road-Runner Alcohol Safety Interlock system; filed Aug. 18, 1976, patented Nov. 22, 1977, Not available NTIS.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20014.

Patent Application 802,189: N-Formyl Peptides Useful as Leucoattractants; filed May 31, 1977.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets SW., Washington, D.C. 20240.

Patent Application 774,354: Sensing Mechanism for Mine Roof Bolting Apparatus; filed Mar. 4, 1977.

Patent Application 809,881: Well Perforating Method for Solution Well Mining; filed June 24, 1977.

Patent Application 817,886: Method for Preparing Solar Collectors; filed July 21, 1977.

Patent Application 817,887: Auger Construction Providing Reduced Noise; filed July 21, 1977.

Patent Application 818,045: Production of Pure Alumina; filed July 22, 1977.

Patent Application 818,183: Method for Eliminating Solution-Level Attack on Cathodes During Electrolysis; filed July 22, 1977.

Patent Application 819,518: Bioelctric Neutralization of Acid Waters; filed July 26, 1977.

Patent Application 829,129: Method of Leaching Aluminum from Feldspar Minerals; filed Aug. 30, 1977.

[FR Doc. 78-5448 Filed 2-28-78; 8:45 am]

[3910-01]

DEPARTMENT OF DEFENSE

Department of the Air Force

COMMUNITY COLLEGE OF THE AIR FORCE (CCAF) ADVISORY COMMITTEE

Meeting

FEBRUARY 15, 1978.

The Community College of the Air Force Advisory Committee is scheduled to meet at 8:30 a.m., March 28, 1978, in Room 41 of the Community College of the Air Force, Building 146, located at Lackland Training Annex, San Antonio, Tex.

The meeting is open to the public.

Agenda items include: Transition to the Commission on Colleges, Master Plan, Review of Existing Programs.

For further information, contact Lt. Col. Wade R. Kilbride, at 512-671-3632.

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

[FR Doc. 78-5287 Filed 2-28-78; 8:45 am]

[3910-01]

USAF SCIENTIFIC ADVISORY BOARD

Changed Meeting

FEBRUARY 22, 1978.

The USAF Scientific Advisory Board Meeting of the Strategic Panel scheduled for March 13-14, 1978, at Headquarters, Aerospace Defense Command (ADCOM), Colorado Springs, Colo., as published in FEDERAL REGISTER, Vol. 43, No. 23, 2849, February 2, 1978, has been changed to March 23-24, 1978. All other information is the same.

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. 78-5298 Filed 2-28-78; 8:45 am]

[3910-01]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

FEBRUARY 23, 1978.

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group, Air Force Systems Command, will hold meetings on March 16, 1978 from 8:30 a.m. to 5 p.m. and March 17, 1978 from 8:30 a.m. to 12 p.m., at Hanscom Air Force Base, Mass. in the Command Management Center, Building 1606.

The Group will receive classified briefings and hold classified discussions on selected Air Force Command, Control and Communications Programs.

The meetings concern matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly the meetings will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8404.

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

[FR Doc. 78-5297 Filed 2-28-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

SOUTHEASTERN POWER ADMINISTRATION

Procedure for Public Participation in Formulation of Marketing Policy

AGENCY: Southeastern Power Administration, Department of Energy.

ACTION: Proposed procedural rule.

SUMMARY: The Administrator of the Southeastern Power Administration (SEPA), which is headquartered at Elberton, Ga., proposes to adopt a procedure for public participation in the formulation of marketing policy. Marketing policy is defined as a policy for marketing any portion of the electric power and energy available for sale by SEPA which the Administrator determines will significantly affect the manner in which SEPA sells or exchanges electric power and energy or provides other services. Under the proposed procedure notice of a proposed policy would be published in the FEDERAL REGISTER and mailed to affected customers and others who have expressed an interest in the subject. The Administrator would have the option of holding a public information forum to explain the proposed policy. In any event, a public comment forum would be held and interested persons would have the opportunity to submit written comments. SEPA staff would evaluate the oral and written comments, following which the Administrator would decide on the policy and issue an explanation of the decision. Written comments will be received on the proposed procedure and an opportunity for oral presentation of views will be provided before a final procedure is adopted.

DATES: Written comments are due on or before March 31, 1978. An opportunity for oral presentation will be provided at Atlanta, Ga., on March 21, 1978.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Ga. 30635. The opportunity for oral presentation of views will be at 9:30 a.m., March 28, 1978, at the Holiday Inn Airport, 1380 Virginia Avenue, Atlanta, Ga. 30320.

FOR FURTHER INFORMATION CONTACT:

Mr. Harry F. Wright, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Ga. 30635, 404-283-3261.

SUPPLEMENTARY INFORMATION: The Southeastern Power Administration (SEPA) was established by the Secretary of the Interior pursuant to section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, to market power and energy from hydroelectric power projects of the Department of the Army in the 10 Southeastern States of West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Kentucky. Section 302(a) of the Department of Energy Organization Act, Pub. L. 95-91, transferred SEPA to the Department of Energy. The transfer took place on October 1, 1977.

There are 21 operating projects in the southeastern area for which SEPA is the marketing agent. One additional project, the Richard B. Russell Dam and Lake, is presently under construction and scheduled for first operation in 1983.

SEPA presently serves some 200 wholesale power purchasers, 2 of which are located outside of the 10-State area referred to above. The nameplate capacity of the power marketed by SEPA is 2,712,375 kilowatts, and the average annual energy is about 6,900,000,000 kilowatt-hours.

SEPA has grouped the projects for which it has marketing responsibility into four separate and distinct systems, each of which is treated separately with respect to operations, sales arrangements, and rate and repayment purposes. These systems are as follows:

Kerr-Philpott projects—two projects located in the Roanoke River basin in Virginia.

Georgia-Alabama projects—nine projects in three river basins, of which seven are located in Georgia and Alabama and two are located on the Georgia-South Carolina border.

Jim Woodruff project—one project located in the Apalachicola River basin on the Georgia-Florida border.

Cumberland Basin projects—eight projects in the Cumberland River basin in Tennessee and Kentucky. A ninth project in the basin, the Laurel project, recently came on line, but long-term marketing arrangements have not yet been made.

SEPA does not own any transmission lines, so to date, it has relied on other utility systems for wheeling power and energy to its preference customers. These wheeling arrangements normally are a part of contracts that also involve sales and exchange arrangements.

In the past SEPA has developed its policies for the allocation of power and energy and the negotiation of power sales, exchange, and wheeling contracts after informal consultation with customers and other interested persons and during the negotiation process. However, in response to requests from existing and potential customers and in keeping with the letter and the spirit of the Department of Energy Organization Act, SEPA now proposes to adopt a more formal pro-

cedure for public participation in the development of marketing policies. The proposed procedure is set forth below.

Dated: February 23, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration.

PROPOSED PROCEDURE FOR PUBLIC PARTICIPATION IN THE FORMULATION OF MARKETING POLICY

1. *Purpose and scope.* The purpose of this procedure is to enable individuals and organizations, public and private, whose interests will be substantively impacted by Southeastern Power Administration (SEPA) decisions or actions, to participate in development of SEPA marketing policies, as defined in the following section 2, prior to SEPA's determination of marketing policies. The procedure shall apply to marketing policy formulation, and not implementation.

2. *Definitions.*—(a) *Administrator.* The SEPA Administrator, or any person acting in such capacity. The administrator may designate a SEPA employee to be responsible for any of his tasks named herein, except those specified in sections 10 and 11 which must be performed by the Administrator himself.

(b) *Customer.* An organization whose interests the Administrator determines will be substantially affected by the proposed marketing policy and which currently is purchasing, exchanging, transferring, assigning, or selling electric power and energy, related services, or transmission capability to, with, or from SEPA.

(c) *Marketing policy.* A policy for marketing any portion of the electric power and energy available for sale by SEPA which the Administrator determines will, over a period of years, significantly affect or alter the manner in which SEPA implements its statutory authority to sell, exchange, otherwise dispose of, or acquire electric power and energy, or provide forced outage reserves, load factoring service, or transmission service.

(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 SEPA's intention to develop a marketing policy, a proposed marketing policy, a revision of a proposed marketing policy, public information and comment forums, and procedures for adopting a marketing policy. Notice shall be by and effective on publication in the FEDERAL REGISTER and wherever a time period is provided, the date of publication shall determine the commencement of the time period. Notice shall also be given by mail to customers and to those individuals and organizations that have requested in writing that they receive written notice regarding a proposed marketing policy or a marketing policy subject. 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 individual who, or organization which, has or could have a direct and significant interest in the SEPA marketing policy.

g. *Staff evaluation.* A written evaluation by the SEPA staff of the written and oral comments on 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.

3. *Decision to formulate a marketing policy and notice of intent.* When the administrator decides a new or revised written marketing policy is needed, SEPA 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. SEPA shall indicate the extent that any existing policy might be revised in developing a new marketing policy. SEPA shall solicit written comments and proposals to use in formulating the proposed marketing policy.

4. *Proposed marketing policy.* SEPA 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 studies used in developing the proposed marketing policy and locations at which SEPA 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 Administrator 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. The Administrator shall determine the number, if any, and locations of such forums in accordance with interest shown in the subject of 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 Administrator shall act as or appoint a forum chairman. Questions raised at the forum shall be answered by SEPA 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 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 studies used in developing the proposed marketing policy are available and their locations. The Administrator shall determine the number and locations of such forums in accordance with interest shown in the subject of the proposed marketing policy. The Administrator 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, SEPA shall allow customers and the public to make oral statements and comments, introduce relevant documents, and ask questions of SEPA representatives at the forum. Persons requesting to speak shall notify SEPA at least 3 days before a forum so a list of forum participants can be prepared. The chairman shall establish time limitations for oral presentations by these participants to assure that all who register to speak shall have an opportunity to do so. Others will be permitted to speak if time allows. Those unable to speak because of time limitations and others who so desire may submit written comments. The chairman may question forum participants and, at his discretion, permit SEPA representatives and other participants a like privilege.

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 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 SEPA regarding the proposed marketing policy until at least 15 days after the last public comment forum.

8. *Staff evaluation.* Following the consultation and comment period, SEPA shall prepare a staff evaluation.

9. *Revised proposed marketing policy and review for revised proposed marketing policy.* If appropriate,

SEPA shall develop a revised proposed marketing policy following the staff evaluation 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 SEPA before the Administrator adopts, modifies and adopts, or rejects the revised proposed marketing policy.

10. *Final marketing policy issued.* Following the staff evaluation the Administrator shall decide whether to adopt, modify and adopt, or reject the marketing policy. The Administrator shall issue an explanation of the decision which shall include the purpose of and the legal authority for the marketing policy, the reasons for the policy, and the primary objections to the proposed power marketing policy submitted by customers or the public with brief explanations for rejecting those objections. SEPA shall give notice of the marketing policy adopted. It shall become effective either on the date of 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 SEPA, its customers, or the public, the Administrator may implement the marketing policy on an interim basis until this procedure is completed.

[FR Doc. 78-5313 Filed 2-28-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. ER76-659]

ALABAMA POWER CO.

Notice of Compliance Filing

FEBRUARY 23, 1978.

Take notice that Alabama Power Co. on February 9, 1978, tendered for filing, pursuant to the approved settlement agreements in the above-noted docket, a compliance report showing the details of refunds made. The Company indicates that the refunds to the municipalities and cooperatives were made on January 26, 1978.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before March 10, 1978. 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. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5355 Filed 2-28-78; 8:45 am]

[6740-02]

[Docket No. E-7738]

BOSTON EDISON CO.

Notice of Filing

FEBRUARY 23, 1978.

Take notice that Boston Edison Co. on February 10, 1978, tendered for filing revised cost of service schedules and amendments to Boston Edison's Rate S-2 prepared in accordance with opinion Nos. 809 and 809-A of the Commission.

Any person disiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before March 10, 1978. 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. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5356 Filed 2-28-78; 8:45 am]

[6740-02]

[Docket No. ER78-220]

CENTRAL HUDSON GAS & ELECTRIC CORP.

Notice of Rate Filing

FEBRUARY 23, 1978.

Take notice that on February 17, 1978, Central Hudson Gas & Electric Corp. (Central Hudson) tendered for filing an Amendment related to transmission service provided from the Roseton Generating Plant to Niagara Mohawk Power Corp. (Niagara Mohawk) in accordance with the provisions of its Rate Schedule F.E.R.C. No. 42.

Central Hudson indicates that the Amendment increases from 6.5% to 8.0% the minimum rate of return to be used by Central Hudson in determining annual charges for transmission service to Niagara Mohawk.

Central Hudson requests waiver of the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit the Amendment to become effective on January 1, 1978.

Central Hudson states that a copy of its filing was served on Niagara Mohawk and the State of New York Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 6, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5357 Filed 2-28-78; 8:45 am]

[6740-02]

[Docket No. ER78-223]

DUKE POWER CO.

Notice of Supplement to Electric Power Contract

FEBRUARY 24, 1978.

Take notice that Duke Power Co. (Duke Power) tendered for filing on February 21, 1978, a supplement to the Company's Electric Power Contract with the town of Huntersville. Duke Power states that this contact is on file with the Commission and has been designated Duke Power Co. Rate Schedule FDPC No. 251.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following increases in contract demand: Delivery Point No. 1, from 2,800 KW to 3,200 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of March 20, 1978.

According to Duke Power copies of this filing were mailed to the town of Huntersville and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protest should be filed on or before March 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5358 Filed 2-28-78; 8:45 am]

[6740-02

[Docket No. ER78-222]

DUKE POWER CO.

Supplement to Electric Power Contract

FEBRUARY 24, 1978.

Take notice that Duke Power Co. (Duke Power) tendered for filing on February 21, 1978, a supplement to the Company's Electric Power Contract with Piedmont Electric Membership Corp. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Co. Rate Schedule FPC No. 138.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following increases in designated demand: Delivery Point No. 4, from 2,100 KW to 3,000 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of March 20, 1978.

According to Duke Power copies of this filing were mailed to Piedmont and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions of protests should be filed on or before march 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5359 Filed 2-28-78; 8:45 am]

[6740-02]

[Docket No. ER76-658]

IOWA POWER & LIGHT CO.

Notice of Compliance Filing

FEBRUARY 24, 1978.

Take notice that Iowa Power & Light Co., on February 16, 1978, tendered for filing revised tariff sheets in compliance with the Commission's Order Approving Settlement Agreement, issued October 26, 1977, in the above-noted docket.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before March 10, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5360 Filed 2-28-78; 8:45 am]

[6740-02]

JERSEY CENTRAL POWER & LIGHT CO.

[Docket No. ER76-813]

Notice of Filing

FEBRUARY 24, 1978.

Take notice that Jersey Central Power & Light Co. (Jersey), by letter dated February 6, 1978, tendered for filing, pursuant to the Commission's order of October 25, 1977, schedules indicating the amounts Jersey has refunded to its wholesale customers. Jersey indicates that a copy of the schedules has been sent to the New Jersey Board of Public Utility Commissioners.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before March 10, 1978. 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. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5361 Filed 2-28-78; 8:45 am]

[6740-02]

[Docket No. ER78-206]

MISSISSIPPI POWER & LIGHT CO.

Notice of Proposed Agreement

FEBRUARY 23, 1978.

Take notice that Mississippi Power & Light Co. (MP&L) on February 3, 1978 tendered for filing a letter agreement dated December 13, 1978, between Tennessee Valley Authority (TVA) and MP&L indicates that the Agreement provides for MP&L to sell during the period of December 10, 1977 through December 24, 1977, 500 mW of capacity with associated energy as scheduled by TVA according to TVA's needs. MP&L states that this assistance is being provided from the reserves available to MP&L and is subject to immediate recall in the event such energy is needed by MP&L's customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before March 6, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5362 Filed 2-28-78; 8:45 am]

[6740-02]

[Docket No. ER76-211]

MOUNT CARMEL PUBLIC UTILITY CO.

Notice of Presiding Judge's Certification of Settlement Agreement to the Commission

FEBRUARY 23, 1978.

Take notice that on February 10, 1978, Presiding Administrative Law

Judge William L. Ellis certified to the Commission pursuant to section 1.18 of the rules of practice and procedure, a "Stipulation and Agreement" executed by Mount Carmel Public Utility Co. and the village of Allendale, Ill., resolving all issues in dispute in this proceeding.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with section 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 10, 1978. 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. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5363 Filed 2-28-78; 8:45 am]

[6740-02]

[Docket No. CP78-119]

NORTHWEST PIPELINE CORP.

Amendment to Application

FEBRUARY 22, 1978.

Take notice that on February 15, 1978, Northwest Pipeline Corp. (Applicant) P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP78-119 an amendment to its application filed in the instant docket pursuant to section 7(c) of the Natural Gas Act so as to provide for the implementation of two agreements dated January 26, 1978, between Applicant and Western Transmission Co. (Western), all as more fully set forth in the amendment on file with the Commission and open to public inspection.

It is indicated that on December 14, 1977, Applicant filed an application in the instant docket requesting, inter alia, authorization to transport natural gas for the account of Michigan Wisconsin Pipeline Co. and the exchange of natural gas with Colorado Interstate Gas Co. (CIG). Applicant states that the application was predicated in part upon Western agreeing to transport certain volumes of natural gas available to Applicant from the Creston Nose Area of Carbon County, Wyo., and that prior to and at the time of the filing by Applicant, Applicant and Western has been unable to agree to the terms and conditions applicable to a transportation service to be provided Applicant by Western. Accordingly, Applicant asserts that it was considering alternate routes to transport the Creston Nose gas to CIG for exchange by displacement. One such alternate route considered was for Applicant to construct a line appriximately due North from the Creston Nose Area to the facilities of CIG approximately 11 miles north of the most northerly well currently dedicated to the project in the Creston Nose Area, it is stated. Applicant indicates that the aforementioned alternative would have parallelled the facilities of Western for the entire 11 miles and would have been located approximately 2 miles west of the facilities of Western.

The application states that after becomming aware of the possible alternative contemplated by Applicant, Western, on September 6, 1977, filed a complaint pursuant to § 1.6 of the Commission's rules of practice and procedure (18 CFR 1.6) and therein made allegations relative to Applicant's violating certain provisions of the Natural Gas Act and the Commission's Regulations thereunder. The application further states that Western concluded its complaint by requesting that the Commission institute a proceeding in which Applicant would be required to show cause why the acts alleged by Western were not in violation of the Natural Gas Act and the Commission's regulations thereunder.

It is indicated that the Western's complaint was assigned Docket No. CP 77-611, and that on September 20, 1977, a copy of the complaint was served on Applicant. Applicant indicates that on October 11, 1977, it filed its answer to the complaint of Western, rebutting the allegation of Western and requesting the dismissal of the proceeding in CP 77-611 or an immediate resolution of the dispute. Applicant further indicates that on November 9, 1977, it filed its motion for expedited resolution of the proceedings in Docket No. CP77-611. It is stated that Western, on or about November 15, 1977, filed its answer to Applicant's motion of November 9, 1977, and that on December 22, 1977, Applicant filed its motion to consolidate proceedings and request for expedited prehearing conference.

Applicant states that it and Western have recently entered into two agreements which have resolved the differences between the two parties and which render the proceedings in CP77-611 moot. Applicant indicates that Western would submit to the Commission a motion requesting the withdrawal of the complaint filed in Docket No. CP77-611, and that Applicant would file its answer in support of Western's motion at the appropriate time.

It is stated that the two agreements entered into between Applicant and Western are as follows:

A. A gas transportation agreement dated January 26, 1978, whereby Western has agreed to transport certain supplies of natural gas which Applicant has available in the Creston Nose Area of Carbon County, Wyo., through Western's facilities for delivery to CIG and

B. An agreement dated January 26, 1978, which provides that Western would have the option to purchase the east-west portion of Trunk A as reflected in Figure 2 of 4 of Exhibit F to the original application filed herein and on Exhibit B to the agreement dated January 26, 1978. The agreement dated January 26, 1978, also provides that should Applicant be required to install compression on the Creston Nose Gathering System, such compression, to the extent possible, would be located at the intersection of Western's transmission line and the east-west portion of Trunk A and provides further that Western would have the right to purchase such compression within three years from the date of installation.

Applicant states that pursuant to the gas transportation agreement, it would gather the volumes of natural gas available to it in the Creston Nose Area and deliver such volumes to Western at a proposed point of interconnection between the facilities of Western and Applicant in Carbon County, Wyo. Applicant further states that the volumes of gas so received by Western from Applicant would be commingled with other volumes in Western's pipeline and equivalent volumes adjusted for heating value would be delivered to CIG for Applicant's account at a point of interconnection between the facilies of Western and CIG in Sweetwater County, Wyo. The volumes of natural gas so delivered to CIG by Western for the account of Applicant would be redelivered to Applicant through the operation of that certain gas purchase, transportation and exchange agreement dated April 1, 1976, as amended November 28, 1977, it is said. It is stated that the ageeement dated April 1, 1976, constitutes CIG's and Applicant's FERC special rate schedules X-59 and X-26, respectively.

The application states that Western proposes to charge Applicant for the transportation service contemplated herein a charge per Mcf equal to the differential rate set forth in Western's gas cost and Western's selling price, which present rate is 12.2 cents per Mcf.

Applicant states that its proposal as originally filed herein has not changed, as it was acknowledged therein that utilizing the existing transmission capacity of Western to transport the Creston Nose volumes to the facilities of CIG was a possible route to take.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before March 16, 1978, file with the Federal Energy Regulatory 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. All persons who have heretofore filed need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5378 Filed 2-28-78; 8:45 am]

[6740-02]

[Docket No. ER78-219]

PENNSYLVANIA-NEW JERSEY-MARYLAND INTERCONNECTION

Notice of Proposed Revised Schedule

FEBRUARY 23, 1978.

Take notice that on February 16, 1978, the Pennsylvania-New Jersey-Maryland Interconnection (composed of Public Service Electric and Gas Co., Philadelphia Electric Co., Pennsylvania Power & Light Co., Baltimore Gas & Electric Co., Jersey Central Power & Light Co., Metropolitan Edison Co., Pennsylvania Electric Co. and Potomac Electric Power Co., hereinafter collectively refereed to as PJM) tendered for filing a revised schedule 8.03 to the Interconnection Agreement between Cleveland Electric Illuminating Co. (CEI) and PJM dated September 30, 1965.

PJM indicates that, for the purpose of conserving energy resources either party to the agreement may arrange to obtain conservation energy from the other. PJM further indicates that when supplied, the charge for conservation energy generated on the supplying system will be 110 percent of the out-of-pocket replacement cost of generating the energy, plus a generation service charge of 3.75 mills per kilowatt hour. PJM states that the schedule also provides for a transmission service charge for deliveries of conservation energy from systems interconnected with CEI or PJM.

PJM requests that, because of the current uncertainty of fuel supplies associated with the coal miners' strike, and the possibility that transactions will be required imminently under the proposed schedule, the Commission waive its notice requirements and allow the proposed schedule to become effective February 16, 1978. Its stated termination date is December 31, 1978.

Any person desiring to be heard or to protest said application should file a petition to intervene or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20246, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests should be filed on or before March 6, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5364 Filed 2-28-78; 8:45 am]

[6740-02]

[Docket No. CP78-192]

SOUTHERN NATURAL GAS CO.

Notice of Application

FEBRUARY 24, 1978.

Take notice that on February 16, 1978, Southern Natural Gas Co. (Applicant), P.O. Box 2563, Birmingham, Ala. 35202, filed in Docket No. CP78-192 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its Bayou Mongoulois Gas Lift and Re-delivery Meter Station, which are located on its 20-inch south section 28 line traversing Lake Mongoulois Field, St. Martin Parish, La., all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to abandon the subject facilities which have been used to account for volumes of gas lift gas transported in the field for Texaco Inc. (Texaco) across Bayou Mongoulois. Applicant indicates that it has been advised by Texaco that Texaco has no further need for the subject facilities. Applicant states that no service is currently being rendered by means of the facilities proposed to be abandoned. Consequently, Applicant requests permission and approval to abandon the subject facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 20, 1978, file with the Federal Energy Regulatory 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 protest 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 jurisdication conferred upon the Federal Energy Regulatory 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 permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5365 Filed 2-28-78; 8:45 am]

[6740-02]

[Docket No. ER78-224]

TUCSON GAS & ELECTRIC CO.

Notice of Filing of Power and Energy Sales Agreement

FEBRUARY 24, 1978

Take notice that Tucson Gas & Electric Co. (TGE) on February 14, 1978 tendered for filing a Power and Energy Sales Agreement (the Agreement) dated February 3, 1978 between TGE and Platte River Power Authority (Platte River). Copies of the filing were served upon Platte River on February 14, 1978, according to TGE.

TGE indicates that the purpose of this Agreement is to establish terms and conditions between the parties relative to the delivery by TGE of firm capacity and associated energy as scheduled by Platte River.

Any person desiring to be heard or to make application with reference to said Agreement should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washing-

ton, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 10, 1978. Protests will be considered by the Commission 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 must file a petition to intervene. Copies of this Agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5366 Filed 2-28-78; 8:45 am]

[6740-02]

[Docket No. CP78-191]

TRUNKLINE GAS CO.

Application

FEBRUARY 22, 1978.

Take notice that on February 15, 1978, Trunkline Gas Co. (Applicant), P.O. Box 1642 Houston, Tex. 77001, filed in Docket No. CP78-191 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 8.4 miles of 24-inch pipeline loop in Jefferson Davis and Calcasieu Parishes, La., and the operation of approximately 23.8 miles of 30-inch pipeline loop to be constructed in Calcasieu, Jefferson Davis, and Beauregard Parishes, La., pursuant to authorization granted in Docket No. CP74-140, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to construct and operate approximately 8.4 miles of 24-inch pipeline loop on its existing Lakeside lateral in Jefferson Davis and Calcasieu Parishes, La., at an estimated total cost of $2,993,000, which cost Applicant would finance from funds on hand, and from short-term bank borrowings. Applicant also requests authorization to operate as a supply line a portion of the facilities previously authorized for construction in CP74-140 in connection with Trunkline's LNG project at Lake Charles, La., namely approximately 23.8 miles of 30-inch pipeline loop from Applicant's mainline facilities at Longville, La. (Station 48), to a point of connection with the 8.4 miles of 24-inch pipeline above described. Applicant indicates that it plans to construct this portion of such 30-inch loop during the summer of 1978 in conjunction with the 24-inch loop, so as to eliminate a bottleneck in Applicant's existing supply system from offshore and Southern Louisiana. The two contiguous sections of pipeline would complete the looping of Applicant's facilities from Lakeside to Longville, La., it is stated.

The application states that only the above described portion of the 30-inch pipeline authorized in Docket No. CP74-140 is presently needed, and the remainder of the certificated pipeline, consisting of 22 miles of 30-inch line to the LNG plant itself, would be constructed at the appropriate time to be in service for the LNG project of which it is a part. It is indicated that the proposed facilities are necessary to ensure that the additional supplies available to Applicant and others would be available for the 1978-79 winter heating season.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 17, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5379 Filed 2-28-78; 8:45 am]

[6740-02]

[Docket No. ER78-221]

UNION ELECTRIC CO.

Notice of Proposed Revised Service Schedules

FEBRUARY 24, 1978.

Take notice that on February 21, 1978, Union Electric Co. (Union) tendered for filing a Second Amendment and revised Schedules II and IV to the Interchange Agreement dated July 30, 1968 between Union and Iowa-Illinois Gas & Electric Co.

Union indicates that said agreement adds system Participation Power to the classifications of power and energy available under the Interchange Agreement between the parties and provides for revisions in certain rates under said Interchange Agreement.

Union proposes an effective date 30 days from the date of filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5367 Filed 2-28-78; 8:45 am]

[6740-02]

[Project No. 2817]

VIGILANTE ELECTRIC COOPERATIVE, INC.

Application for Preliminary Permit

FEBRUARY 24, 1978.

Public notice is hereby given that an application for preliminary permit was filed on September 22, 1977, under the Federal Power Act (16 U.S.C. 791a-825r) by Vigilante Electric Cooperative, Inc. (applicant) (correspondence to: Mr. Wilbur L. Anderson, General Manager, Vigilante Electric Cooperative, Inc., 225 East Bannack Street, Dillon, Mont. 59725), for the proposed Broadwater-Missouri project No. 2817. The proposed project would be located on the Missouri River, in Broadwater County, Mont., near the cities of Toston and Townsend. The Missouri River is a navigable waterway of the United States.

Applicant proposes to develop a hydroelectric facility in conjunction with

an existing 378-foot-long concrete dam which is presently used for irrigation purposes. The proposed project would utilize the existing conservation pool. Although subject to modification, the proposed project would also consist of: (1) A powerhouse to be located near the dam spillway and adjacent to the existing irrigation canal outlet at the right abutment of the dam; (2) an intake structure; (3) two fixed-blade, horizontal bulb-type turbines to be operated at a normal head of 33 feet; (4) two 5,500 kW generators; (5) a substation and switchyard to be located adjacent to the new powerhouse; and (6) a 2-mile-long transmission line from the proposed facility to applicant's existing transmission line system. Applicant also proposes to install radial gates to replace the planks now in use at the dam.

The power developed by the proposed project would be utilized by applicant to assist in meeting its present and future load requirements.

A preliminary permit does not authorize the construction of a project. A permit, if issued, gives the permittee during the period of the permit the right of priority of application for license while the permittee undertakes the necessary studies and examinations to determine the engineering and economic feasibility of the proposed project, the market for the power, and all other necessary information for inclusion in an application for a license.

Any person desiring to be heard or to make protest with reference to said application should, on or before May 9, 1978, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., 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 a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

The application is on file with the Commission and is available for inspection.

The public should take further notice that on October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977), and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

The "savings provisions" of section 705(b) of the DOE Act provide that proceedings pending before the Federal Power Commission on the date the DOE Act takes effect shall not be affected, and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued, and further actions shall be taken by the appropriate component of DOE now responsible for the functions under the DOE Act and regulations promulgated thereunder. The functions which are the subject of these proceedings were specifically transferred to the FERC by section 402(a)(1) of the DOE Act.

The joint regulation adopted on October 1, 1977, by the Secretary of Energy and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC" 10 CFR ——, *Provided*, That this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-5368 Filed 2-28-78; 8:45 am]

[6560.01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL-861-8; OPP-00068]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

Meeting

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA)

ACTION: Notice of open meeting

SUMMARY: There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel from 9:30 a.m. to 4:30 p.m. daily on Friday, March 17 and Saturday, March 18, 1978. The meeting will be held in the Department of Pathology Conference Room, School of Medicine, University of California, San Francisco, Calif., and will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (WH-566), Room 803, Crystal Mall, Building 2, 1921 Jefferson Davis Highway, Arlington, Va., telephone 703-557-7560.

SUPPLEMENTARY INFORMATION: In accordance with section 25(d) of the amended FIFRA, the Scientific Advisory Panel will comment on the impact on health and the environment of regulatory actions under sections 6(b) and 25 (a) prior to implementation. The purpose of this meeting is to discuss the following topics:

1. Review of Proposed Rulemaking on Optional Procedures for Classification of Pesticide Uses by Regulations (Phase II);

2. Review of epidemiological data required for assessment of hazards to farmworkers re-entering fields treated with pesticides.

Because of limited seating capacity, any member of the public wishing to attend or submit a paper should contact Dr. H. Wade Fowler, Jr., at the address or phone listed above. Interested persons are permitted to file written statements before or after the meeting, and may upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. Written or oral statements will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit 10 copies of a summary no later than March 14, 1978.

Individuals who wish to file written statements are advised to submit 10 copies of statements to the Executive Secretary in a timely manner to ensure appropriate consideration by the Panel.

Dated: February 23, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-5424 Filed 2-28-78; 8:45 am]

[6560-01]

[FRL 861-5; OPP-50358]

MONSANTO CO.

Issuance of Experimental Use Permit

The Environmental Protection Agency (EPA) has issued an experimental use permit to the following applicant. Such permit is in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 524-EUP-24. Monsanto Co., St. Louis, Mo. 63166. This experimental use permit allows the use of 2,060 pounds of the herbicide Glyphosate on cotton and soybeans to evaluate control of various weeds. A total of 2,060 acres is involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is

effective from January 17, 1978 to January 17, 1979. Temporary tolerances for residues of the active ingredient in or on cotton forage, cottonseed, soybean grain, forage, and hay, liver, kidney of cattle, goats, hogs, horses, poultry, and sheep, and a food additive regulation for residues of the active ingredient in soybean hulls have been established.

Interested parties wishing to review the experimental use permit are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460. It is suggested that such interested persons call 202-755-4851 before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. This file will be available for inspection from 8:30 a.m. to 4 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).)

Dated: February 22, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-5280 Filed 2-28-78; 8:45 am]

[6560-01]

[FRL 861-6; OPP-30142]

PESTICIDE PROGRAMS

Receipt of Applications To Register Pesticide Products Containing New Active Ingredients

Applications have been submitted to the Environmental Protection Agency (EPA) to register pesticide products containing an active ingredient which has not been included in any previously registered pesticide products. Applications were made pursuant to the provisions of the Federal Insecticide, Fungacide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) et seq.), and the regulations thereunder (40 CFR 162.6(b)(6)). Notice of receipt of these applications does not indicate a decision by the Agency on the applications.

Interested persons are invited to submit written comments on these applications to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, Room 401, East Tower, 401 M Street SW., Washington D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and others interested in inspecting them. The comments must be received on or before March 31, 1978 and should bear a notation indicating the EPA File Symbol number of the application to which the comments pertain. Comments received within the specified time period will be considered before a final decision is made with respect to the pending application. Comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific questions concerning these applications and the data submitted should be directed to the Product Manager (PM) 17, Registration Division (WH-567), Office of Pesticide Programs, at the above address or by telephone at area code 202-426-9425. The labels furnished by FMC Corp., as well as written comments filed pursuant to this notice, will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Notice of approval or denial of the applications to register pesticide products listed will be announced in the FEDERAL REGISTER. Except for such material protected by Section 10 of FIFRA, the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision shall be made available after approval pursuant to section 3(c)(2) of FIFRA. The procedures for requesting such data will be given in the FEDERAL REGISTER if an application is approved.

Dated: February 21, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-5281 Filed 2-28-78; 8:45 am]

APPLICATIONS RECEIVED

EPA File Symbol 279-GNRG. FMC Corp., Agricultural Chemical Division, 2000 Market Street, Philadelphia, Pa. 19103. Pounce Technical. Active Ingredient: Permethrin, *(3-phenoxyphenyl) methyl (±) cis - trans - 3 - (2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate* 92.0 percent. Application proposes that this product be used as an insecticide for formulating use only.

EPA File Symbol 279-GNRU. FMC Corp., Agricultural Chemical Division, 2000 Market Street, Philadelphia, Pa. 19103. Pounce 3.2 EC. Active Ingredient: Permethrin, *(3-phenoxyphenyl) methyl (±) cis - trans - 3 - (2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate* 38.4 percent. Application proposes that this product be classified for restricted use as an insecticide for aerial or ground application to cotton against bollworm, tobacco budworm, boll weevil, pink bollworm, cotton leaf perforator and lygus.

[6560-01]

[FRL 861-7; OPP-30141]

PESTICIDE PROGRAMS

Receipt of Applications To Register Pesticide Products Containing New Active Ingredients

Applicationss have been submitted to the Environmental Protection Agency (EPA) to register pesticide products containing active ingredients which have not been included in any previously registered pesticide products. Applications were made pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) et seq.), and the regulations thereunder (40 CFR 162.6(b)(6)). Notice of receipt of these applications does not indicate a decision by the Agency on the applications.

Interested persons are invited to submit written comments on any applications referred to in this notice to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. The comments must be received on or before March 31, 1978 and should bear a notation indicating the EPA File Symbol number of the application to which the comments pertain. Comments received within the specified time period will be considered before a final decision is made with respect to the pending applications. Comments received after the specified time period will be considered only to the extent possible without delaying processing of the application.

Specific questions concerning these applications and the data submitted should be directed to the Product Managers (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address or appropriate phone number listed below. The labels furnished by each applicant as well as all written comments filed pursuant to this notice, will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Notice of approval or denial of the applications to register pesticide products listed will be announced in the FEDERAL REGISTER. Except for such material protected by Section 10 of FIFRA, the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision shall be made available after approval pursuant to section 3(c)(2) of the Freedom of Information Act. The procedures for requesting such data will be given in the FEDERAL REGISTER if an application is approved.

Dated: February 21, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

APPLICATIONS RECEIVED

EPA File Symbol 35980-R. Atlantic and Pacific Research Inc., P.O. Box 14366, North

Palm Beach, Fla. 33408. SM-3. Active Ingredients: *Cytokinin-like activity equivalent to 100 ppm Kinetin* .0001 percent. Application proposes that this product be classified for general use as a growth regulator on oranges. PM25 202-426-2632.

EPA File Symbol 201-GTI. Shell Chemical Co., Suite 200, 1025 Connecticut Avenue NW., Washington, D.C. 20036. ACCEL. Active Ingredients: *N-(phenylmethyl)-9-(tetrahydro-2H-pyran-2-yl)-9H-Purin-6-amine* 1.3 percent. Application proposes that this product be classified for general use on roses, carnations, and mums in greenhouses. PM25 202-426-2632.

[FR Doc. 78-5282 Filed 2-28-78; 8:45 am]

[6560-01]

[FRL 861-4; OPP-42004C]

STATE OF SOUTH CAROLINA

Approval of State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 et seq.), and the implementing regulations of 40 CFR Part 171, require each State desiring to certify applicators to submit a plan to EPA for its certification program. Any State certification program under this section shall be maintained in accordance with the State Plan approved under this section.

On October 28, 1975, notice was published in the FEDERAL REGISTER (40 FR 50122) of the intent of the Regional Administrator, EPA, Region IV, to approve, on a contingent basis, the South Carolina State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides. Contingent approval was requested by the State of South Carolina, of the South Carolina Pesticide Control Act enacted June 4, 1975. Complete copies of the South Carolina State Plan were made available for public inspection at the Agency's Region IV Office in Atlanta, at the Office of the Division of Regulatory and Public Service Programs, Clemson University, Clemson, South Carolina, and at the Agency's Technical Services Division, Federal Register Section, Office of Pesticide Programs, EPA Headquarters, Washington, D.C.

Contingent approval of the Plan was granted pending promulgation of final regulations for the enforcement of the South Carolina Act. Notice of contingent approval was published in the FEDERAL REGISTER on January 6, 1976 (41 FR 1125).

Final regulations for the enforcement of the South Carolina Pesticide Control Act were published in the South Carolina State Register on December 12, 1977, and became effective upon publication. Therefore, it has been determined that the South Carolina State Plan will satisfy the requirements of Section 4(a)(2) of the amended FIFRA and 40 CFR Part 171.

The South Carolina Plan will remain available for public inspection at the Division of Regulatory and Public Service Programs, Clemson University, Clemson, S.C. 29631.

EFFECTIVE DATE

Pursuant to Section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the Agency finds that there is good cause for providing that the approval granted herein to the South Carolina Plan shall be effective upon signature of this notice.

Accordingly, this approval shall become effective immediately.

Dated: February 6, 1978.

JOHN A. LITTLE,
Deputy Regional Administrator,
Region IV.

[FR Doc. 78-5279 Filed 2-28-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. I-438]

COMMON CARRIER SERVICES INFORMATION

International and Satellite Radio Applications Accepted for Filing

BY THE CHIEF, COMMON CARRIER BUREAU.

FEBRUARY 21, 1978.

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, regulations and its policies. Final action will not be taken on any of these applications earlier than 31 days following the date of this notice. Section 309(d)(1).

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

SATELLITE COMMUNICATIONS SERVICES

MD, 297-CSG-R-78 Communications Satellite Corp. (WA27), Clarksburg, MD. Renewal of Station License (Developmental) from February 15, 1978 to February 15, 1979.

AL, 312-DSE-P/L-78 TV Cable Co., of Andalusia, Inc., Andalusia, AL. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 31°18'45" N., Long. 86°31'45" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 6-meter antenna.

VA, 313-DSE-P/L-78 The Christian Broadcasting Network, Inc., Virginia Beach, VA. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 36°48'07" N., Long. 76°11'40" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 10-meter antenna.

MN, 314-DSE-P/L-78 American Television & Communications Corp., Mankoto, MN. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 44°10'24" N., Long. 93°57'04" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 5-meter antenna.

MI, 315-DSE-P/L-78 Gerity Broadcasting Co., Essexville, MI. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 43°36'53" W., Long. 83°50'37" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 4.5-meter antenna.

FL, 316-DSE-M/L-78 North Lauderdale Cablevision, Inc. (WE56), North Lauderdale, FL. Modification of License to permit share use in the Earth Station.

TX, 320-DSE-P/L-78 Valley Cable TV, Inc., Brownsville, TX. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 25°57'16" N., Long. 97°30'58" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 6-meter antenna.

TX, 321-DSE-P/L-78 Valley Cable TV, Inc., Weslaco, TX. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 26°08'10" N., Long. 97°57'29" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 4.3-meter antenna.

TX, 322-DSE-P/L-78 Valley Cable TV, Inc., Harlingen, TX. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 26°10'06" N., Long. 97°41'36" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 6-meter antenna.

TX, 323-DSE-P/L-78 Valley Cable TV, Inc., Raymondville, TX. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 26°25'42" N., Long. 97°47'10" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 6-meter antenna.

CA, 324-DSE-P/L-78 Sammons Communications Inc., Stanislaus County, CA. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 37°27'55" N., Long. 120°54'59" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 4.5-meter antenna.

MI, 325-DSE-P/L-78 Muskegon Cable TV Co., Norton Shores, MI. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 43°12'07" N., Long. 86°15'41" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 4.5-meter antenna.

IL, 326-DSE-P/L-78 Central Cable System, Inc., Clinton, IL. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 40°09'45" N., Long. 88°56'45" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 5-meter antenna.

MA, 327-DSE-P/L-78 Nantucket Cablevision Corp., Nantucket, MA. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 41°16'50" N., Long. 70°10'10" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 5-meter antenna.

AR, 328-DSE-P/L-78 Twin Lakes Television Co., Berryville, AR. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 36°22'58" N., Long. 93°33'32" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 5-meter antenna.

NM, 329-DSE-P/L-78 Las Cruces TV Cable, Las Cruces, NM. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 32°17'49" N., Long. 106°46'42" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 4.5-meter antenna.

IA, 330-DSE-P/L-78 Greater Algona Cable TV, Inc., Algona, LA. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 43°04'05" N., Long. 94°12'19" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 5-meter antenna.

IA, 331-DSE-P/L-78 Greater Humboldt-Dakota City Cable TV, Inc., Humboldt, IA. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 42°42'23" N., Long. 94°12'19" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 5-meter antenna.

WY, 332-DSE-P/L-78 New Castle Cable TV, Inc., Elk Mountain, WY. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 43°43'42" N., Long. 104°02'57" W. Rec. Freq. 3700-4200MHz. Emission 36000F9., with a 4.5-meter antenna.

[FR Doc. 78-5396 Filed 2-28-78; 8:45 am]

[6720-01]

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Publication of Accounting Bulletin IA-5

FEBRUARY 17, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Publication of bulletin.

SUMMARY: This bulletin provides guidance to institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation, and service corporations and joint ventures of such institutions, with respect to audits by internal auditors. The substance of the information contained herein was available in a predecessor bulletin issued on May 23, 1967, now superseded; the present reformulation is necessary for updating and revision, as described below.

EFFECTIVE DATE: January 1, 1978.

FOR FURTHER INFORMATION, CONTACT:

Gerald P. Weintraub of the Office of Examinations and Supervision, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552, telephone 377-6539.

SUPPLEMENTARY INFORMATION: Section 563.17-1 of the regulations for the Federal Savings and Loan Insurance Corporation (12 CFR 563.17-1) mandates that each insured institution be audited at least annually in a manner satisfactory to the Corporation. Policy Statement 571.2 (12 CFR 571.2) provides that this audit requirement may be satisfied by means of an audit by a public accountant or internal auditor, and prescribes that auditors comply with such additional requirements as may be issued by the Board's Office of Examinations and Supervision. Bulletin PA-7a (reissued at 42 FR 29962-4; June 10, 1977) sets forth the Office's policy with respect to audits of insured institutions by independent public accountants. Guidelines for internal auditors were similarly established by Bulletin IA-4 on May 23, 1967.

Since its adoption, Bulletin IA-4 has become outdated and would have required substantial revision to comport with regulatory changes and other developments of the last ten years; therefore, Bulletin IA-5 was developed instead.

In addition to a change of format, the major differences between the old and new guidelines are as follows:

1. Bulletin IA-4 set forth detailed auditing procedures concerning all facets of an institution's operations; Bulletin IA-5 recognizes the impracticality of specifying in advance the range and scope that may be appropriate for an auditor's review and directs the internal auditor to use generally accepted auditing standards, supplemented by certain appropriate minimum scope procedures.

2. With respect to the qualifications of an internal auditor, Bulletin IA-5 specifies familiarity with all applicable publications which pertain to the review, including periodic releases of the Financial Managers Society for Savings Institutions, Inc., and the American Institute of Certified Public Accountants. Bulletin IA-4 made no mention of the auditor's continuing responsiblity to remain aware of current auditing developments.

3. Bulletin IA-4 provided for an audit of transactions originating within each 6-month period; Bulletin IA-5 recognizes the growing complexities of the savings and loan business and permits various test checks to be performed on an annual basis.

4. Bulletin IA-5 clarifies that all audit procedures and the review of internal controls are fully applicable to accounting records maintained on automated equipment and refers to applicable Bank Board and American Institute of Certified Public Accountants policy statements.

5. Bulletin IA-5 incorporates the financial statement requirement set forth in Insurance Regulations 563.17-1(a)(2) and 563.45; Bulletin IA-4 was adopted prior to the publication of these requirements.

6. Bulletin IA-5 is applicable to audits of service corporations which were not in existence when Bulletin IA-4 was adopted.

7. Part Two of Bulletin IA-4, pertaining to "Modifications of Examination Procedures," was not included in Bulletin IA-5 because it is obsolete and incompatible with present examination procedures.

BULLETIN IA-5: AUDITS OF INSURED INSTITUTIONS, SERVICE CORPORATIONS, AND JOINT VENTURES BY INTERNAL AUDITORS

This Bulletin supplements the Federal Savings and Loan Insurance Corporation's Statement of Policy (§ 571.2 of the Rules and Regulations for Insurance of Accounts) with respect to audits by internal auditors. Internal auditors must meet all applicable requirements of such Statement as well as all requirements set out in this Bulletin.

I. APPLICABLE AUDITING STANDARDS

As a minimum, internal auditors must use generally accepted auditing standards. The internal auditor shall be familiar with applicable publications of the Financial Managers Society for Savings Institutions, Inc. (FMS), and of the American Institute of Certified Public Accountants (AICPA), including the "Internal Auditors Manual for Savings Institutions," (FMS); the industry audit guide, "Audits of Savings and Loan Associations," (AICPA); "Statements on Auditing Standards," (AICPA); and subsequent SAS releases promulgated periodically by the AICPA.

II. AUDIT PERIOD

The term "audit period" refers to the period of time between "audit dates." The period should be twelve (12) calendar months and may not be changed without approval of the District Director-Examinations.

III. AUDIT DATE

The term"audit date" refers to the AS OF date for annual audit reports to the District Director-Examinations. The audit date should coincide with a month-end date. Nothing said herein should be construed as prohibiting the commencement of audit work on an unannounced basis or as prohibiting continuous audit programs.

IV. SCOPE OF AUDIT

A. *General requirements.* The internal auditor shall be familiar with the statutes, rules and regulations (Federal and State) under which the institution being audited operates, and with its charter and bylaw provisions.

The audit should incorporate the necessary procedures to satisfy the internal auditor that there is compliance with the applicable regulations that relate to accounting matters and accordingly may affect the institution's financial position or results of operations.

In instances where the internal auditor anticipates any material potential loss in the assets of the institution or a serious violation of any Federal or applicable State regulation, the circumstances should be discussed with the District Director-Examina-

tions as soon as the audit work which disclosed the situation is completed.

Nothing in this Bulletin shall be construed to imply authority for the omission of any procedure which internal auditors would ordinarily employ in the course of an audit made for the purpose of making a statement as to the accuracy of financial reports.

Any of the procedures referred to herein with respect to the review of internal controls or audit procedures are fully applicable to accounting records maintained on automated equipment. The internal auditor shall be familiar with appropriate publications in this area as may be issued from time to time by the Federal Home Loan Bank Board, OES, FMS, or AICPA, including Bulletin PA-7-1 and "Audits of Service Center Produced Records" (AICPA, 1974).

B. *Board of Directors' resolution.* As of the effective date of this Bulletin (for existing internal audit programs) and/or at the time of commencing a new internal audit program, the board of directors of the institution and, where applicable, the board of directors of each service corporation, shall furnish the District Director-Examinations with a copy of the minutes of the directors' meeting at which a resolution providing for the following was adopted:

1. That the internal audit shall be performed to the satisfaction of the District Director-Examinations.

2. That the internal auditor is independent of all association operating and management personnel, that the auditor shall have access to all records of the association without prior notice wherever they may be and that the auditor shall report to the institution's board of directors (or audit committee thereof) any denial of access to such record by any officer or employee.

3. That the internal auditor shall make available, if requested by the District Director-Examinations, completed audit work programs and related audit workpapers, and shall render, if requested, a letter report to the District Director-Examinations indicating specific auditing procedures performed and the results thereof.

4. That the internal auditor shall perform specific auditing procedures in instances when the District Director-Examinations has issued written instructions to the internal auditor. These specific procedures may be in addition to those customarily performed by an internal auditor in accomplishing the audit program. The internal auditor may communicate to the board of directors (or audit committee thereof) and appropriate management officials, any specific instructions received from the District Director-Examinations, if in the judgment of the auditor, such communication should be made.

5. That the internal auditor shall meet at least annually with either the institution's and/or service corporation's full board of directors or a duly elected or appointed audit committee of the board of directors. The purpose of the meeting would encompass a discussion of written reports which set forth the scope and results of work accomplished since the preceding meeting (including the annual report to the District Director-Examinations) along with recommendations and corrective actions taken by operating personnel. In connection with the meeting at which the annual report is discussed, the directors shall promptly file a letter with the District Director-Examinations acknowledging the meeting and setting forth action to be taken with respect to any deficiencies noted in the audit report.

6. That the internal auditor shall, upon discovering an apparent defalcation or being informed of such a matter, determine that the institution has immediately notified the District Director-Examinations in writing of the apparent defalcation. If the institution did not make such notification, the internal auditor shall immediately notify the District Director-Examinations and the board of directors of such defalcation.

Additionally, for new internal audits, the resolution shall confirm the items required by section 571.2(c)(1)(ii) of the Policy Statement.

C. *Review of the system of internal control.* The internal auditor has the responsibility to review and evaluate the adequacy of the institution's system of internal control in establishing the scope of his audit tests. Prior to any review, the internal auditor should be familiar with the chapters on internal control contained in the "Internal Auditors Manual for Savings Institutions" published by the FMS.

At this time, the FHLBB has not attempted to devise a standard list of internal controls which should be adopted by all savings and loan institutions and their subsidiaries. It is the responsibility of the internal auditor to develop a comprehensive control questionnaire as part of his review of the internal controls.

In conjunction with and in the rendering of the annual report (see Part V of this Bulletin), the internal auditor shall disclose any material weaknesses in the institution's system of internal controls and shall include recommendations for strengthening controls in the areas of such weaknesses, together with corrective actions taken by the institution's management or operating personnel.

The internal auditor must review and test the written descriptions of the institution's systems of internal controls for the major areas of activity. The internal auditor is cautioned not to accept management's statements regarding controls in existence. The auditor should determine through observation, inquiry and tests of transactions that such controls are operative. Workpapers must indicate the methodology and the results of the tests. Any deficiences noted by the internal auditor must be reported to management and the board of directors and appropriate follow-up action must be taken.

As a minimum, matters regarding physical and accounting controls in the following areas of an institution's operations should be reviewed and tested (such list is not designed nor intended to supplant the internal auditor's judgment): Cash—Cash balances (on hand and in banks); Cash receipts (including payments on loans, deposits and investments); Cash disbursements (including withdrawals, lending, and expenses); Consignment items (travelers checks, savings bonds, etc.). Marketable securities and other investments. Loans—Lending policies and procedures; Documents; Delinquencies; Interest income and accrual computations; Unique controls required by specific types of loans. Real estate owned (acquired for investment and/or through foreclosure or in lieu thereof). Property. Other assets and deferred charges. Savings accounts—Inactive accounts; Passbooks and certificates; Opening; Closing; Interest expense and accrual computations. Borrowed money. Advances by borrowers for taxes and insurance. Other liabilities and deferred credits. Net worth and/or retained earnings accounts. Review of operations.

D. *Confirmation of loans and savings accounts.* The audit must include satisfactory confirmation of loans and savings accounts by direct correspondence. The internal auditor shall determine the extent of confirmation that in the auditor's judgment is necessary. The internal auditor's workpapers shall clearly disclose the number and percent, by both number and dollar amount, of loans and savings accounts confirmed. The workpapers must also disclose the type of confirmation used (i.e., positive or negative) and the basis used to select accounts for confirmation. If statistical sampling is used as the basis for selecting accounts, the workpapers must also disclose the method used and the confidence level achieved.

The internal auditor shall include in the periodic reports to the board of directors of the institution, and in the annual report to the District Director-Examinations, any material exceptions to confirmation requests that are not satisfactorily reconciled.

E. *Inspection of loan documents.* The internal auditor has the responsibility to determine the extent that documents supporting loans made and purchased, prior and subsequent to the date of the previous audit report, are to be inspected. The auditor's workpapers shall clearly disclose the percent of the number of new loan files examined to the number originated in the current audit period. In addition, the working papers must disclose the number and percent of files examined applicable to previous audit periods to the total number of loans outstanding as of the end of the audit period. The workpapers shall also disclose the basis used to select loan accounts for documents inspection and the specific documents inspected for each loan.

The internal auditor shall include in the periodic reports to the board of directors of the institution, and in the annual report to the District Director-Examinations, any material exception noted in the loan documents examined that are not satisfactorily resolved.

F. *Loans and participations sold or purchased.* The internal auditor has the responsibility to determine the extent of audit tests to be performed on loans and participations sold or purchased. The audit workpapers shall clearly indicate the extent of audit procedures performed and conclusions reached.

Audit procedures shall include confirmation of significant balances of loans or participations sold or purchased and the significant terms of the purchase or sale agreement with the purchaser or seller.

For loans or participations purchased, the internal auditor's workpapers shall clearly disclose the methods used to determine the adequacy of auditing procedures with respect to loans serviced by others. Such procedures shall include, as appropriate, obtaining letters from the servicing organization's public accountant and/or internal auditor confirming the extent to which their examination included confirmation of such loans, examination of related document files and determination of the accuracy of dilinquency reports to the purchaser, and the results of such audit tests.

G. *Review of adequacy of valuation allowances.* Particular care should be exercised in determining the need for and the adequacy of valuation allowances. The internal auditor shall consider the need for obtaining appraisals by independent, profes-

sional appraisers. The internal auditor shall discuss with the District Director-Examinations any proposed independent appraisal program prior to proceeding with such a program.

H. *Personnel.* The internal auditor shall endeavor to avoid the use of operating personnel in the performance of the audit. However, if it is necessary to use such personnel, they should be closely supervised. Operating personnel must not be used to audit the records of the department to which they are assigned or the work for which they are responsible.

V. ANNUAL AUDIT REPORT TO THE DISTRICT DIRECTOR-EXAMINATIONS

An annual report of the internal audit must be prepared as of the audit date. The report should contain an outline of the scope and results of the work accomplished, along with the internal auditor's findings and recommendations, and the corrective actions taken by the institution.

The annual report must contain a summary of all matters of material substance contained in any reports to the institution's board of directors (or audit committee) since the preceding annual report.

The annual report shall contain a statement to the effect that the internal auditor has reviewed all annual and semiannual reports submitted to the Federal Home Loan Bank Board by the insured institution or service corporation during the audit period, and that the reports are accurate and present the correct financial condition in accordance with the instructions for the reports.

The annual report shall also contain such financial statements as will meet the requirements for financial statements contained in Insurance Regulation 563.17-1(a)(2) and 563.45 (when applicable).

The term "annual audit report" refers, in addition to the material specifically required by this section, to the report on internal control, or to any other special or supplemental reports related to the audit or the report thereon, but not to the periodic reports submitted to the directors if matters of material substance contained in the periodic reports are summarized in the annual report.

VI. FILING OF ANNUAL AUDIT REPORTS

The internal auditor shall file a copy of the annual audit report with the District Director—Examinations within 90 calendar days following the audit date. If the internal auditor finds that completion of the audit and issuance of his report will require a period in excess of 90 calendar days from the audit date, an extension of time from the District Director—Examinations should be requested in writing, providing the reasons for such delay. Unwarranted delay in completion of the audit or report thereon may be a basis for rejection of the internal audit by the District Director—Examinations.

VII. CHANGE OF INTERNAL AUDITOR

If the board of directors, by appropriate resolution, terminates an internal auditor, the institution must notify the District Director—Examinations in writing (with a copy to the terminated auditor) within 15 days folowing such termination. Such notification must indicate the reason for the termination and must state whether in the past 24 months there were any disagreements with the internal auditor on any matter of auditing principles or practices, which disagreements if not resolved to the satisfaction of the internal auditor would have caused the auditor to make reference in the annual audit report to the subject matter of the disagreement. The board of directors shall request the terminated auditor to furnish a letter to the District Director—Examinations stating whether there is agreement with the statements contained in the letter of the institution and, if not, stating the respects in which there is disagreement.

A new internal auditor should be named within sixty days of the termination of an internal auditor. Action of the board of directors as provided by section IV.B of this bulletin shall be accomplished.

VIII. OTHER REQUIREMENTS

The internal auditor shall not rely upon the performance of an examination by the Federal Home Loan Bank Board's Office of Examinations and Supervision, or report based thereon, to diminish his responsibility with respect to an audit of an insured institution or service corporation or subsidiary thereof.

This bulletin becomes effective for audit years beginning after December 31, 1977 and supersedes all previous IA bulletins issued by this Office. Inquiries and requests for information regarding matters covered by this Bulletin or Statement of Policy 571.2 should be directed to the District Director—Examinations for the Federal Home Loan Bank District in which the home office of an insured institution is located.

WILLIAM SPRAGUE,
Director, Office of Examinations and Supervision.

(Secs. 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.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc. 78-5382 Filed 2-28-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

AMERICAN EXPORT DIVISION OF FARRELL

Notice of Substitution

The Federal Maritime Commission has been notified by counsel for Farrell Lines Inc. that American Export Lines, Inc. will be merged into Farrell Lines Inc. on or about March 28, 1978; and that thereafter American Export will be operated by Farrell Lines as "American Export Division of Farrell." As a result of this merger, Farrell Lines Inc. will succeed by operation of law to the rights and liabilities of American Export Lines, Inc., including the rights and liabilities under the respective approved section 15 Agreements to which American Export Lines, Inc. is presently a party. Accordingly, the records of the Federal Maritime Commission concerning approved agreements to which American Export is presently a party will be changed, effective the date of the merger, to substitute the name of "American Export Division of Farrell," as a participating carrier, in place of American Export. In addition, the conference and ratemaking agreements to which American Export is presently a party are obligated to notify the Commission that they have also changed their records accordingly. The following is a list of the agreements involved:

Conference and rate agreements

17	8210	9522-B
2846	8220	9522-C
5660	8420	9548
5850	8558	9577
7100	8650	9615
7670	9214	9982
7690	9238	9984
7770	9239	10117
8040	9461	10155
8050	9522-A	10261

Other than conference and rate agreements

9623	10267	80846
9627	10305	9735
9705	9481	9905
10276	9996	10030
9972	10148	10051
9981	10149	10118
10050	80432	10254
10203	80646	9233
10138	80744	

Terminal agreements

T-2901	T-2903	T-2891

Dated: February 23, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-5295 Filed 2-28-78; 8:45 am]

[6730-01]

[Independent Ocean Freight Fowarder License No. 149OR]

AVERY & TAYLOR IMPORT-EXPORT SERVICES, INC.

Order of Revocation

On February 18, 1978, Avery & Taylor Import-Export Services, Inc., voluntarily surrendered its Independent Ocean Freight Forwarder License No. 149OR for revocation.

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), § 5.01(c), dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 149OR issued to Avery & Taylor Import-Export Services, Inc., be and is hereby revoked effective February 18, 1978 without prejudice to reapply for a license in the future.

It is further ordered, That a copy of this Order be published in the FEDERAL

REGISTER and served upon Avery & Taylor Import-Export Services, Inc.,

LEROY F. FULLER,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-5292 Filed 2-28-78; 8:45 am]

[6730-01]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by Section 311(p)(1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	Owner/operator and vessels
01087	Dampskibsselskabet Torm A/S: *Torm Herdis.*
01106	N.V. Stoomvaart-Maatschappij Oostzee: *Winsum.*
01323	Manchester Liners Ltd.: *Seatrain Trenton.*
01428	Ocean Transport & Trading Ltd.: *Menestheus.*
01613	Reardon Smith Line Ltd.: *Welsh City.*
01877	Carbocoke Societa Di Navigazione SPA: *Luigi Lagrange, Solaro.*
02194	Compagnie Generale Maritime: *Gauguin.*
02274	Albis Ardua Societa Di Navigazione: *Voluntas.*
02418	Sidermar S.P.A.: *Perseus.*
02458	The China Navigation Co. Ltd.: *Coral Chief.*
02877	Nippon Yusen Kabushiki Kaisha: *Jingu Maru, Wakatake Maru.*
03004	Rederi Ab Soya: *Traviata.*
03727	Continental Oil Co.: *Sinclair 8.*
04447	Williamette-Western Corp.: *Multnomah, Wahkiakum.*
04562	Okada Kaiun Kabushiki Kaisha: *Grace.*
04564	Yamashita-Shinnihon Kisen Kaisha: *Wakashige Maru.*
04652	Astrocielo Compania Naviera S.A.: *Athanasios.*
05040	General Construction Co.: *Mukilteo.*
05537	Empresa Navegacion Mambisa: *Jose Marti, O'Higgins.*
05577	Far Eastern Shipping Co.: *Pioner Vladivostoka.*
06478	Korea Marine Industry Development Corp.: *Soo Gong 51.*
06510	Compagnie Nationale Algerienne De Navigation: *Gara Djebilet, Tlemcen, Medea.*
07743	Yangming Marine Transport Corp.: *Ming Cheer, Ming Giant, Ming Joy.*
08131	Empresa Naveacion Caribe: *Primero De Mayo, Puerto De Vita, Comandante Vilo Acuna.*
08234	Burmah Oil Tankers Ltd.: *Burmah Endeavour.*
08473	Tokyo Marine Co., Ltd.: *Fujiaki Maru.*
09098	The Boswell Oil Co.: *Chem 2.*
10227	Professional Navigation Corp.: *Golden Grampus.*
10254	Hambro S.A.: *Ramar*
10405	J.A. Reinecke K.G.: *Canaima.*
10696	K.G.G. Co., S.A.: *Sea Bird No. 83.*
12041	Ulterwyk Corp.: *Miriam.*
12145	Chevron U.S.A. Inc.: *Chevron Arizona.*
12586	Amer-Yhtyma Oy: *Finn-Amer.*
12631	Hamilton Bros., Inc.: *Maray.*
12620	Compania Micacea S.A.: *Victoria II.*
12727	Sea Trading Ltd.: *Windglow, Etai.*
12805	Compagnie Generale D'Armements Maritimes: Alpha Mariner.
13048	Monumental Marine Inc.: *Doric Merchant.*
13167	Map Tankers Inc.: *Unicorn Derek.*
13168	Chesterton Corp.: *Mereghan V.*
13169	Bulkcargo Navigation Corp. Ltd.: *Polly.*
13171	International Transport Simoon Inc.: *Simoon.*
13172	International Transport Solano Inc.: *Solano.*
13173	Transocean Martime Transport Inc.: *Oriental Endeavour, Oriental Banker.*
13174	A.E. Sorensen A/S: *A.E.S.*
13175	Lunden: *Charlotte S.*
13176	Partrederiet: Star Eitt: *Star Sea.*
13177	Marilambri Compania Naviera S.A. of Panama: *Raphaella.*
13178	Seacalf Shipping Corp.: *Aiolos.*
13179	Winston Corp.: *Winston.*
13183	Partrederiet Tongala: *Tongala.*
13184	Italmare S.P.A.: *Libia Cuomo.*
13185	Golar Gas Transport, Inc.: *Khannur.*
13186	Clausen Singapore Private Ltd.: *Codan, Inger Clausen.*
13187	Clearwater Navigation S.A.: *Hakata.*
13188	Orange Field Steamship Co. Inc.: *Mari Gold.*
13189	Kuwana Kaiun K.K.: *Sokai Maru.*
13190	Nagashiki Kogyo Kabushiki Kaisha: *Shinsei Maru.*
13191	Fletamentos Maritimos, S.A.: *Tarragona.*
13192	Al Ain Tanker Co. Inc.: *Al Ain.*
13193	Southern Metals Shipping Ltd.: *Diamond.*
13194	Stella Corp.: *Corinthiakos.*
13195	Osprey Dredge and Derrick Co. Inc.: *Pelican.*
13196	Greenpeace Foundation/Save the Whales: *Ohana Kai.*
13197	Sunoco Terminals, Inc.: *LOU II, New Orleans.*
13199	Keplion International Inc.: *Kanuka Forest.*
13200	Canal Freight Lines Inc.: *CC 206, CC 207, CC 211.*
13201	Trans Seas Cargoes Corp. of Liberia: *MESSINIAKI AKTIDA.*
13202	Partsrederiet Fjordaas: *Fjordaas.*
13203	Aeolian Beach Marine, Inc.: *EUROSUN.*
13207	K/S Merc Scandia XV: *MERCANDIAN STAR.*
13208	K/S Merc Scandia XIV: *Mercandian Prince.*
13209	Tamassos Shipping Co. S.A. Panama: *Antonios.*
13211	La Sabanas Shipping Co. S.A.: *Ocean Lead.*
13232	Rederij North Pole N.V.: *North Pole, South Pole.*
13263	Blue Jay Co.: *ROBERT L., TED E.*
13292	Mrs C.J. Dammers: *Jan Willem.*
13294	Blue Mast Shipping Co. S.A.: *Argolikos.*
13304	Reedereigesellschaft MS Planet Henry Gerdau KG (G.m.b.h. & Co.): *Planet.*
13323	Stolt Norness Inc.: *Stolt Norness.*
13341	Agean Sky Inc.: *Blue Pearl.*
13366	Mar De Plata Co. Naviera S.A. Panama: *Transworld Goliath.*
13370	Bowoon Sangsa Co., Ltd.: *Bowoon No. 9.*
13428	Westfield Shipping Co. Ltd.: *Thamesfield.*
13436	South Continental Tanker Corp., Inc.: *Transud II.*
13444	Norfolk Shipping Co. Ltd.: *Eastern Moon.*
13468	Thoresen International A/S: *Torafjord, Torasund, Hai Hing.*
13474	Ever Sunshine Navigation S.A: *Silver Star.*
13475	Marmira Compania Naviera S.A.: *Pantazis Caias.*
13476	Macky De Navegacion S.A.: *Atlantic Albatross.*
13478	I/S Karen Winther: *Karen Winther.*
13483	Messrs Timber Shipping Inc.: *Strathkirn.*
13486	Syntagma Shipping Co. S.A.: *Ioanna V.*
13491	K.K. Iyo Kosan: *Ryujin Maru.*
13495	Proteas Maritime Inc.: *Singapore Progress.*
13496	Brittas Bay Shipping Co. Ltd.: *Silvergate.*
13497	Oriental Petroleum Carriers, Inc.; *Energy Transport.*
13498	Fairway Shipping Inc.: *Fairway.*
13499	Jermyn Shipping Corp.: *Biakh.*
13493	Associated Express Container Services, Inc.: *Oriental Executive.*
13500	Intercontinental Car Carriers S.A.: *President.*
13501	Panama Hero Shipping S.A.: *Hero No. 1.*
13502	Dodona Shipping Corp.: *Asphalt Merchant.*
13503	Standard Navigazione S.P.A.: *Punta Stella.*
13504	Adelfan Corp.: *PHGH.*
13505	Citadel Shipping Co. Ltd.: *Anastasia II.*
13506	Kelburn Shipping Corp.: *Union Reefer.*
13508	Shinsei Kaiun K.K.: *Osaka Reefer.*
13509	Partrederiet Wilnina: *Wilnina.*
13510	Bigal Shipping Corp.: *Cherry Flower.*
13512	Shipco 2296, Inc.: *Keystone Canyon.*
13513	Partrederiet Thor Star: *Thor Star.*
13514	Nefeli Compania Maritima S.A. Panama: *Nikolaos*
13515	Rederiet AF 24. November 1975: *Jytte Danielsen.*
13516	Neptune Gamma (PTE), Ltd.: *Neptune Peridot.*
13517	Ace Navigation Co., Ltd.: *Hual Traveller.*
13518	Ace Transportation Co., Ltd.: *Hual Trotter.*
13520	Sanji Hara: *Nadayoshi Maru No. 10, Nadayoshi Maru No. 15.*
13522	Cala D'Olivo S.P.A. Di Navigazione: *Frigo Harmony.*
13526	Letterman, Ltd.: *Nopal Audrey.*
13556	Metropolitan Seaboard Corp.: *Mykali II.*
13558	Marcostar Shipping Corp. S.A. Panama: *Eva.*
13565	Lift-Off, Inc.: *Lift Off.*
13576	Standard Shipping, Inc.: *Jaymat Trident.*
13580	Kaiyo Suisan Kabushiki Kaisha: *Kaiyo Maru No. 1.*
13582	Congelador Mar Tres S.A.: *Congelador Mar Tres.*
13583	Congelador Mar Uno S.A.: *Congelador Mar Uno.*
13584	Eastern Petroleum Carriers, Inc.: *Energy Generation.*
13585	El Paso Sonatrach Tanker Co.: *El Paso Sonatrach.*
13586	El Paso Paul Kayser Tanker Co.: *El Paso Paul Kayser.*
13587	Arbyx Diamond Shipping S.A.: *Kriti Diamond.*
13588	Spiliada Maritime Corp. of Liberia: *Spiliada.*
13589	Overseas Petroleum Carriers, Inc.: *Energy Resource.*
13590	Wijdzicht B. V. Scheepvaart & Handelmij: *Eric.*
13592	Dubhe Transport, Inc.: *Dubhe.*
13603	Audley Shipping, Ltd.: *Alamo.*
13607	Gloria Maritime Naveganes S.A.: *Oleander.*
13612	Liberian Cynosure Transports, Inc.: *World Probity.*
13613	U.T.G., Inc.: *Freedom.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-5293 Filed 2-28-78; 8:45 am]

[6730-01]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Notice of Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 311(p)(1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil

Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	Owner/operator and vessels
01032	The Graig Shipping Co., Ltd.: *Graigwyd.*
01123	Hemisphere Transportation Corp.: *Tulsa Getty.*
01266	Aktieselskabet Ornen: *Thor I.*
01428	Ocean Transport & Trading, Ltd.: *Nestor, Melampus.*
01841	Chas. Kurz & Co., Inc.: *Meton.*
01866	Industria Armamento S.P.A.: *Honestas.*
02126	Morania Oil Tanker Corp.: *Morania No. 400, T-30.*
02194	Compagnie Generale Maritime: *Cavelier De La Salle.*
02198	Peninsular & Oriental Steam Navigation Co.: *Stratheden, Strathesk.*
02259	Neste Oy: *Uikku.*
02458	The China Navigation Co., Ltd.: *Nimos.*
02465	Koch-Ellis Marine Contractors: *KE 46, KE 47, LEC 5.*
02917	Scherkate Sahami Keschtirani Melli Arya: *Arya Shahab, Arya Sepehr.*
03314	Gulf Oil Corp.: *American Independence.*
03502	Shinyei Senpaku K.K.: *Kinkasan Maru.*
03640	Pan Ocean Bulk Carriers, Ltd.: *Pan Dynasty, Pan Crystal.*
03708	Puget Sound Tug & Barge Co.: *ST-20.*
03866	M. Smits: *Louise Smits, Ida Smits.*
04081	Jugoslavenska Oceanska Plovidba, Kotor: *Kosmaj.*
04114	Italcarbo Societa Di Navigazione S.P.A.: *Corallina.*
04163	Cenac Towing Co., Inc.: *CTCO-197, CTCO-198.*
04172	Eklof Marine Corp.: *E-17.*
04179	Ory Bros. Marine Service of America, Inc.: *Fueler No. 3, CBL-302.*
04228	Compagnie Maritime Belge (Lloyd Royal) S.A.: *Montenaken.*
04262	Eddie Steamship Co., Ltd.: *Concord Navigator, Weilee, Panamax World.*
04357	Nedlloyd Lijnen B.V.: *Nedlloyd Houtman.*
04398	Hapa-Lloyd Aktiengesellschaft: *Duesseldorf Express.*
04437	Lebeouf Bros. Towing Co., Inc.: *Barbara, Boy, Dwight, Ellen, Leslie.*
04564	Yamashita-Shinnihon Kisen Kaisha: *Nichiyu Maru.*
04803	Brent Towing Co., Inc.: *Betty Brent, B-2124, B-2128, B-2224, B-2324, B-2424, B-2524.*
04939	Panocean-Anco, Ltd.: *Pass of Balmaha.*
05271	Compania Chilena De Navegacion Interoceanica: *Arauco.*
05377	Manson Construction & Engineering Co. and Osberg Construction Co.: *BC 46.*
05736	Flota Cubana De Pesca: *Rio Jatibonico, Rio Toa.*
06063	Belcher Towing Co.: *Belcher No. 35.*
06510	Compagnie Nationale Algerienne De Navigation: *Edough, Djurdjura, Beni-Saf, Ghazaouet, Tenes, Tin-Hinan, Collo, Chelia, Djorf, Hodna, Cherchell, Dellys, Ksar El Boukhari.*
06729	Overseas Containers Ltd.: *Table Bay.*
07363	Martin Fuel Distributors, Inc.: *AHC 13, M.T. 1.*
07743	Uangming Marine Transport Corp.: *Ming Youth, Ming Young, Ming Challenger, Ming Leader, Ming Wisdom.*
07808	Fleet Towing Co., Inc.: *Van H. Powell.*
07874	Sanmarco Vrontados S.A.: *Polyzeni.*
08682	Kankichi Yukawa: *Hosei Maru No. 58.*
08709	Bibby Freighters, Ltd.: *Dorsetshire.*
08818	Venus Carriers Corp. S.A.: *Erica.*
09002	Commercial Transport Corp.: *N.M.S. No. 1400, N.M.S. No. 1401, N.M.S. No. 1407, N.M.S. No. 1456, N.M.S. No. 1460, N.M.S. No. 1463, N.M.S. No. 1466.*
09389	Triangle Shifting & Fleeting Service, Inc.: *TC-20, GDM 264.*
10035	Crystal Steamship Co. S.A.: *Rye Gas.*
10190	Union Gulf Marine Co. S.A.: *Union Osaka.*
10260	Hollywood Marine, Inc.: *Hollywood 830.*
10433	Estonian Shipping Co.: *Aleksandra Artjukhina, Jaan Anvelt, Ivan Rusakov, Aleksandr Vinokurov, Vera Lebedeva, Petr Krasikov, Vasiliy Shelgunov, Nicolay Shvernik, Leninskaja Gvardija.*
10931	Hansung Shipping Co., Ltd.: *Scan Challenger.*
11011	Power Corp. of Canada, Ltd.: *Louis R. Desmarais.*
11286	Binion Marine Service, Inc.: *TCB 307.*
11369	P.T. Rig Tenders, Inc.: *H-49.*
11372	Crowley Maritime International S.A.: *Active.*
11541	Hancock Shipping Co., Ltd.: *Houston Trader.*
11614	Chung Gai Ship Management Co., Ltd.: *Nada.*
11921	Point Landing Fuel Corp.: *PL 101.*
12024	Venezolana De Buques-Venebuques C.A.: *Ceres I, Guiria.*
12115	Nippon Kyodo Hogei K.K.: *Ohtsu Maru, Nisshin Maru No. 3.*
12202	Atwood Oceanics International S.A.: *Regional Enterprise.*
12374	Bayard Line (Maldives), Ltd.: *Kyuta Maru.*
12609	Houssam Shipping Corp. S.A.: *Houssam B.*
12673	M.J. Rudolph Corp.: *R 12, R 14.*
12682	Technica Aeromaritima S.A.: *Southern Isle.*
13025	Federal Pacific (Liberia), Ltd.: *Federal Rhine.*
13068	Ocean & Gulf Shipping Corp.: *Triton.*
13084	The Oliver Transportation Co.: *Coen 125.*
13096	Amherst Shipping Co., Inc.: *Aries.*
13097	Mount Ocean Line S.A.: *Celta Lily.*
13100	Morgan Marine Corp.: *WGH-16.*
13101	Pacific Sunshine S.A.: *Canopy.*
13104	Continental (London), Ltd.: *Lutetian.*
13127	Sishen Shipping (PTY), Ltd.: *Sishen.*
13145	Jay Shree Shipping Prop. Jay Shree Tea & Industries, Ltd.: *Jay Gayatri.*
13156	Gemini Transport, Inc.: *Torocoba.*
13157	Triscantin Shipping S.A.: *Oriental Forest.*
13158	Tsushima Unyu K.K.: *Shoko Maru.*
13159	Connaught Shipping S.A.: *Great Brisbane.*
13160	Gloxinia Shipping Corp.: *Aliakmon Light.*
13161	Kim-Marine Ltd.: *Sconset.*
13162	Kim-Ship Ltd.: *Great Point.*
13163	Orpheus Tanker Corp.: *World Eulogy.*
13164	Transload & Transport, Inc.: *TCB-67, TCB-68, REB-1901, REB-1902.*
13165	Josef Roth (Cyprus) Shipping Co. Ltd.: *Anton Roth, Viktoria Roth, Helene Roth.*
13166	Angali Shipping Co. Ltd.: *Irenes Sea.*
13170	Dumfries Shipping Co. Ltd.: *Eastern Maid.*
13180	San Constantino Compania General De Buques S.A. (Panama): *EFMAR.*
13191	Fletamentos Maritimos S.A.: *Ceuta.*
13198	Sedihyo Line Ltd.: *Blue Akeishi.*
13204	University Maritime Ltd:. *Thistle Endeavour.*
13205	Afthoros Maritime Corp. *Thistle Venture.*
13253	Jackson Marine Corp. *Hustler, Vagabond.*
13254	Tug and Marine Operators Ltd.: *Teague Bay, Turquoise Bay.*
13271	South Island Shipping Inc.: *Energy Vitality.*
13289	Barro Colorado Shipping Co. S.A.: *Keiyo.*
13314	Marubeni Maritime Management Inc.: *Pacific Royal, Pacific Master, Pacific Peace.*
13318	Prudential Transport Corp.: *Virginia.*
13328	K/S A/S Karmoy Supply & Co.: *Karmoy Boy.*
13350	Sunny Island Transport Inc.: *Juno.*
13362	Galatia Shipping Corp.: *San Juan.*
13368	Sanko Kisen (Cayman) Ltd.: *Neptune Leo.*
13388	Pressos Compania Naviera S.A.: *Nicolaos Angelakis.*
13390	William Randolph: *Little Lil.*
13402	Chiles Offshore Ltd.: *Texas Star.*
13409	Partrederiet Talisman: *Talisman.*
13424	Nordic Breeze Shipping Ltd., London: *Nordic Breeze.*
13425	K/S Merc Scandia XVI: *Mercandian Moon.*
13426	Vermala Shipping Enterprises Ltd.: *Gay Fidelity.*
13433	Thenal Shipping Corp., Liberia: *Sea Lion.*
13435	K/S Royal Viking Sea: *Royal Viking Sea.*
13543	Tokai Gyogyo Kabushiki Kaisha: *Nadayoshi Maru No. 5, Nadayoshi Maru No. 7, Nadayoshi Maru No. 12, Nadayoshi Maru No. 18, Nadayoshi Maru No. 20.*
13545	Negros Shipping S.A.: *Blue Ocean.*
13546	Kabushiki Kaisha Maruma Uodonya: *Masu Maru No. 8.*
13547	Holland America Cruises N.V.: *Rotterdam, Statendam, Prinsendam.*
13548	Holland Amerika Lijn N.V.: *Veendam, Volendam.*
13551	Deckships Ltd.: *Stefi.*
13561	Cherry Point S.A.: *Santa Lucia II.*
13562	Aurora Reederei G.m.b.H. & Co. KG. MS Maretrader: *Maretrader.*
13567	Third Shipmore Associates: *Overseas New York.*
13568	Alvenus Shipping Co. Ltd.: *Algol.*
13569	Multan Maritime S.A.: *Duke Albatross.*
13570	Mina Co. Ltd.: *Minarosa.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-5294 Filed 2-27-78; 8:45 am]

[6730-01]

[Independent Ocean Freight Forwarder License No. 105]

JOSEPH CORTINA

Order of Revocation

The bond issued in favor of Joseph Cortina, P.O. Box 603, Tampa, Fla. 33601, FMC No. 105, was cancelled effective February 21, 1978.

By letter dated January 23, 1978, the licensee was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 105 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before February 21, 1978.

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.

Joseph Cortina 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(d) dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 105 be and is hereby revoked effective February 21, 1978.

It is further ordered, That Independent Ocean Freight Forwarder License No. 105 issued to Joseph Cortina be returned to the Commission for cancellation.

It is further ordered, That a copy of this Order be published in the FEDERAL

REGISTER and served upon Joseph Cortina.

LEROY F. FULLER,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-5296 Filed 2-28-78; 8:45 am]

[1610-01]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt and Approval of a Proposed Report

A request for clearance of a proposed report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on February 14, 1978. (See 44 U.S.C. 3512 (c) and (d).) The purpose of publishing this notice is to inform the public of such receipt and the action taken by GAO.

CIVIL AERONUTICS BOARD

Request for clearance on an emergency basis was received from the CAB for a letter to be sent to companies who write charter operator surety bonds. The letter requests information as to whether claims have been filed against individual surety bonds and the amounts of such claims. The CAB needs this information immediately to insure that the monies deposited by all passengers signing up for flights from tour operators are adequately protected. Respondents number about 60 and reporting burden is estimated to be two hours per respondent.

The GAO granted clearance of this request on February 22, 1978, under number B-180226 (S78007) because CAB was able to demonstrate potential public harm if a normal clearance review period had been used.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-5411 Filed 2-28-78; 8:45 am]

[1610-01]

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following requests for clearance of a report intended for use in collecting information from the public was accepted by the Regulatory Reports Review Staff, GAO, on February 22, 1978. (See 44 U.S.C. 3512 (c) and (d).) The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such acceptance.

The notice includes the title of the request received; the name of the agency sponoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed ICC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before March 20, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

INTERSTATE COMMERCE COMMISSION

The clearance of ICC Form BOp-101, Quarterly Report of Under and Over Estimates, expired on September 30, 1977. Since the ICC did not request an extension of clearance for this form at that date, the form has been deleted from the GAO inventory. Accordingly, the Commission form has no effective clearance as required by the Federal Reports Act.

The ICC has subsquently requested reinstatement clearance of Form BOp-101 which is required to be filed by household goods carriers. The ICC states that there are no changes to the form. The Quarterly Report of Under and Over Estimates is intended to provide factual data relating to each individual incorrect estimate to allow evaluation of estimating practices by the Commission, the reporting movers and the public. Form BOp-101 is required to be filed by all household goods carriers for only those quarters during which the carrier prepares any estimates which are in error in excess of 10 percent. If no estimates were prepared during a particular quarter or if all estimates which were prepared were within 10 percent of the final actual costs, no report is required. The reports are mandatory and available for public inspection. The ICC estimates that reports are received from 300-400 carriers each quarter and that reporting time averages 10 hours per response.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-5412 Filed 2-28-78; 8:45 am]

[4110-02]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

EMERGENCY SCHOOL AID ACT

Extension of Closing Date for Receipt of Applications for Fiscal Year 1978

Under the authority contained in the Emergency School Aid Act, Title VII of Pub. L. 92-318, as amended (20 U.S.C. 1601-1619). the Commissioner of Education extends the February 28, 1978, closing date for the receipt of certain applications under the Act of March 14, 1978. The purpose of the extension is to permit applicants in areas which have recently experienced severe weather conditions more time to develop applications consistent with requirements concerning public and advisory committee participation. However, the extension applies to all applications invited by the notice of the February 28 closing date published in the FEDERAL REGISTER on January 4, 1978 (43 FR 796). Applicants which have already filed applications pursuant to that notice will be permitted (but are not required) to review, revise, and refile their applications by the extended closing date.

The extended closing date applies to applications from local educational agencies for the following types of assistance: 1. Basic Grants under section 706(a) of the Act; 2. Pilot Project grants under section 706(b) of the Act; 3. Bilingual Project grants under section 708(c) of the Act; 4. Special Project grants under section 708(a) of the Act to assist in implementing nonrequired plans described in section 706(a)(1)(D) of the Act and 45 CFR 185.11(b)(4), providing for the enrollment of nonresident children.

The extended closing date also applies to applications from other agencies and organizations, indicated below, for the following types of assistance:

1. Grants under section 708(b) of the Act to public or private nonprofit organizations other than local educational agencies; 2. Bilingual Project grants under section 708(c) to private nonprofit organizations; 3. Special Project grants under section 708(a) of the Act to the central public education agencies in Puerto Rico, Guam, American Samoa, the Virgin Islands and the Trust Territories of the Pacific Islands; 4. Special Arts Project grants under section 708(a) of the Act to public agencies responsible for the administration of statewide arts programs; 5. Special Mathematics Project grants under section 708(a)(3) of the Act to private nonprofit agencies; and 6. Special Student Concerns Project grants under section 708(a) of the Act to public agencies other than local educational agencies.

The Assistant Secretary for Education has determined that awards for Special Projects described in this notice will make substantial progress toward meeting the purposes of the Act.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information packages.

Closing date: March 14, 1978.

A. Applications sent by mail. An application sent by mail should be addressed to: U.S. Office of Education, Application Control Center, Washington, D.C. 20202. The address for applications should be marked as follows: Attention: 13.525A (for Basic Grants); Attention: 13.526A (for Pilot Projects); Attention: 13.528A (for Bilingual LEA Projects); Attention: 13.532K (for Special Projects for section 706(a)(1)(D) plans); Attention: 13.529A (for Nonprofit Organization Projects under section 708(b)); Attention: 13.528B (for Bilingual Nonprofit Organization Projects); Attention: 13.532C (for Special Projects in jurisdictions other than States); Attention: 13.532D (for Special Arts Projects); Attention: 13.532E (for Special Mathematics Projects); Attention: 13.532F (for Special Student Concerns Projects). Applications must be received by the Application Control Center on or before the closing date. In an effort to prevent the late arrival of applications due to unforeseen circumstances, the Office of Education suggests that applicants consider the use of registered or certified mail as explained below.

An application sent by mail will be considered to be received on time by the Application Control Center if:

(1) The application was sent by registered or certified mail not later than March 9, 1978, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare or the U.S. Office of Education mail rooms in Washington, D.C. In establishing the date of receipt, the Commissioner will rely on the time-date stamp of these mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare or the U.S. Office of Education.

B. Hand-delivered applications. An application to be hand-delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building Three, 7th and D Streets SW., Washington, D.C. Hand-delivered applications will be accepted daily between the hours of 8 a.m. and 4 p.m., Washington, D.C., time, except Saturdays, Sundays, and Federal holidays. Applications will not be accepted after 4 p.m. on the closing date.

C. Program information. The amount of funds available for each type will be established after enactment of appropriation legislation.

In fiscal year 1977, funds were expended as follows: (a) 430 Basic Grants, in an average amount of $307,580;

(b) 162 Pilot Project grants, in an average amount of $198,462;

(c) 24 Bilingual Projects grants to local educational agencies, in an average amount of $338,520;

(d) 4 Special Project grants to support nonrequired plans described in section 706(a)(1)(D) of the Act, in an average amount of $378,144;

(e) 205 grants to nonprofit agencies, in an average amount of $83,881;

(f) 5 Special Project grants to public agencies in jurisdictions other than States, in an average amount of $560,000;

(g) 15 Special Arts Project grants, in an average amount of $99,747;

(h) 1 Special Mathematics Project grant, in the amount of $750,000; and

(i) 7 Special Student Concerns Project grants, in an average amount of $205,403.

D. Project periods. Grants made pursuant to this notice will be for projects starting no earlier than July 1, 1978, and ending no later than September 30, 1979, but in no case for more than a 12-month period.

E. For further information and forms contact: Division of Program Operations, Equal Educational Opportunity Program, U.S. Office of Education, 400 Maryland Avenue SW., Room 2007A, Washington, D.C. 20202; 202-245-7965.

F. Applicable regulations. Grant awards made pursuant to this notice will be subject to the following regulations: (1) Regulations relating only to assistance under the Emergency School Aid Act (45 CFR Part 185), and (2) The Office of Education general provisions regulations (45 CFR Parts 100, 100a and appendixes) except to the extent that these regulations are inconsistent with 45 CFR Part 185.

(20 U.S.C. 1601-1619.)

(Catalog of Federal Domestic Assistance Number 13.525, Basic Grants; 13.526, Pilot Projects; 13.528, Bilingual Projects; 13.529, Public and Nonprofit Private Organization Grants; 13.532, Special Projects-Emergency School Aid.)

Dated: February 27, 1978.

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

[FR Doc. 78-5514 Filed 2-28-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-78-846]

REPORT DEVELOPMENT OF ENERGY PERFORMANCE STANDARDS FOR NEW CONSTRUCTION

Public Meeting

AGENCY: Department of Housing and Urban Development.

ACTION: Public Meeting.

SUMMARY: The purpose of the meeting is to inform the public about the first phase of the program to develop energy performance standards for new construction. It will be held on Thursday, March 16, 1978, at 9:30 a.m. in the Department of Commerce Auditorium, Main Entrance on 14th Street, Washington, D.C. 20230. HUD is conducting a three-phase program in conformance with Title III of Pub. L. 94-385, the Energy Conservation Standards for New Buildings Act of 1976. The agenda will include a report on the activities carried out to establish a baseline or reference on how much energy nonresidential and residential buildings are currently designed to use. Topics presented will include:

1. Development of Building and Climate Classification Systems
2. Sample Selections
3. Data Collection and Analysis
4. Findings

An overview of the second phase of the program will also be presented. All interested parties are invited to attend. A period will be set aside for questions and comments.

FOR FURTHER INFORMATION CONTACT:

Mary Ann Eichenberger, 202-755-6230.

Issued at Washington, D.C., February 22, 1978.

DONNA E. SHALALA,
Assistant Secretary for Policy Development and Research.

[FR Doc. 78-5308 Filed 2-28-78; 8:45 am]

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: W. E. Arrington, Inc., P.O. Box 881, Idaho Falls, Idaho 83401.

This application is a correction to one that appeared in FR Doc. 78-3009, filed February 2, 1978, 8:45 a.m. The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale for propagation, tigers (*Panthera tigris*), leopards (*Panthera pardus*), and jaguars (*Panthera onca*) listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-1816. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 24, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-5324 Filed 2-28-78; 8:45 am]

[4310-55]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Raymond Louis Holmes, Route 2, Box 29 GC, Tahlequah, Okla. 74464.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale for propagation, those species of pheasants listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-2141. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 24, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-5325 Filed 2-28-78; 8:45 am]

[4310-55]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: M. L. Hutto, 124 Mac Circle, Lexington, S.C. 29072.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale for propagation, those species of pheasants listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-1894. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 24, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-5326 Filed 2-28-78; 8:45 am]

[4310-55]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Kings Island, P.O. Box 400, Kings Mills, Ohio 45034.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale in interstate commerce for propagation, those species of tigers (*Panthera tigris*) listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-2165. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 24, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-5327 Filed 2-28-78; 8:45 am]

[4310-55]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: St. Louis Zoological Park, Forest Park, St. Louis, Mo. 63110.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale for propagation, those species of animals listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-2147. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 24, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-5328 Filed 2-28-78; 8:45 am]

[4310-55]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Seneca Park Zoo, 2222 St. Paul Street, Rochester, N.Y. 14621.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale for propagation, tigers (*Panthera tigris*), Mikado pheasants (*Syrmaticus mikado*), and Swinhoe's pheasant (*Lophura swinhoii*) listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-1896. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 24, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-5329 Filed 2-28-78; 8:45 am]

[4310-55]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Richard M. Sewell, 223 Dunes Road, North Bend, Oreg. 97459.

The applicant wishes to apply for a Captive Self-Sustaining Population

permit authorizing the purchase and sale in interstate commerce for propagation, those species of pheasants listed in 50 CFR Section 17.11 as T (C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-2150. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 24, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-5330 Filed 2-28-78; 8:45 am]

[4310-55]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Charles L. Taylor, R.R. No. 2, Box No. 37, Delphi, Ind. 46923.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale for propagation, those species of pheasants listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-1895. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 24, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-5331 Filed 2-28-78; 8:45 am]

[4310-55]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Toledo Zoological Gardens, 2700 Broadway, Toledo, Ohio 43609.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale for propagation, those species of felines listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-2183. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 24, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-5332 Filed 2-28-78; 8:45 am]

[4310-55]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Sven F. Walther, Rt. 1, Box 283, Cornelius, Oreg. 97113.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale for propagation, those species of pheasants listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-2138. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 24, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-5333 Filed 2-28-78; 8:45 am]

[4310-55]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Washington Park Zoological Gardens, Lake Front, Michigan City, Ind. 46350.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale for propagation, Bengal tigers (*Panthera tigris*), leopards (*Panthera pardus*), and jaguars (*Panthera onca*) listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-1891. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: February 24, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-5334 Filed 2-28-78; 8:45 am]

[4310-84]

Office of the Secretary

ESTABLISHMENT OF GRAZING FEES FOR 1978

Revised Schedule

The Department of the Interior has published proposed regulations on fees (43 FR 60109) with a 90-day public comment period ending on February 21, 1978. The proposed regulations would establish a revised fee schedule based upon results of a 1977 fee study. As recommended to the Congress, proposed fees in 1978 would be less than under existing regulations, but higher than 1977 fees.

Establishment of Grazing Fees for 1978. The grazing fee year extends from March 1 through the last day in February of the following year. Grazing fee billings and authorizations are normally issued prior to the permittee's first grazing period in the new fee year. Because the comment period

on the proposed grazing fee rulemaking extended to Feb. 21, 1978, a determination of 1978 grazing fees by March 1, 1978, will not allow adequate time to fully evaluate public comments on the proposed rulemaking. This notice providing for the continuation of the 1977 grazing fee until the establishment of 1978 grazing fee is necessary to allow full evaluation of the comments received. During this interim period, preliminary bills will be issued at the 1977 fee rate to avoid delay or inconvenience to the grazing permittee.

This notice shall not be construed to imply or mean that any fee increase over the 1977 rate will not be collected for the utilization of livestock forage for the fee year starting March 1, 1978.

Effective Date. This notice is effective March 1, 1978, and shall remain in effect until cancelled by the issuance of the final rulemaking on 1978 grazing fees.

Dated: February 27, 1978.

GARY J. WICKS,
Deputy Assistant Secretary of the Interior.

[FR Doc. 78-5588 Filed 2-28-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-48]

ALTERNATING PRESSURE PADS

Order regarding Investigation

Pursuant to my authority as Chief Administrative Law Judge of this commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued February 23, 1978.

MYRON R. RENICK,
Chief Administrative Law Judge.

[FR Doc. 78-5419 Filed 2-28-78; 8:45 am]

[7020-02]

[Investigation No. 337-TA-29]

CERTAIN WELDED STAINLESS STEEL PIPE AND TUBE

Commission Determination and Action

The United States International Trade Commission ("Commission") having instituted an investigation pursuant to its Notice of Investigation issued on February 16, 1977;

And, having heard this matter in accordance with the provisions of 19 U.S.C. 1337 (section 337) and 5 U.S.C. 551-559;

Has determined[1] That there is in this investigation a violation of section 337 by reason of the importation or sale or both (as the case may be) by persons named in this order of certain welded stainless steel pipe and tube at prices lower than the average variable cost of production of said product without commercial justification; that an order directing these persons to cease and desist from this practice should be issued in lieu of a direction under section 337(d) that the articles concerned be excluded from entry into the United States; that such order has none of the effects listed under section 337(f) such that the order should not be issued; and that during the period of Presidential consideration of this order under section 337(g), the articles concerned shall be entitled to entry free of bond.

Therefore, the Commission hereby issues the following order as its action in this matter:

ORDER TO CEASE AND DESIST

I. DEFINITIONS

The terms in quotations below shall be defined as shown for purposes of interpreting this order:

"Respondents" refer to all respondents listed below, their successors and assigns:

Ataka & Co., Ltd.
Brasimet Industries Corp.
Hanwa Co., Ltd.
Kanematsu-Gosho, Ltd.
Marubeni Corp.
Nissho-Iwai Co., Ltd.
Okura Trading Co., Ltd.
Sumitomo Shoji America, Inc.
Sumitomo Shoji Kaisha, Ltd.
Toa Seiki Co., Ltd.
Toyo Menka Kaisha, Ltd.

"Commission" refers to the United States International Trade Commission.

"Stainless steel" refers to any alloy steel which contains less than one percent of carbon and a mimimum of ten percent of chromium.

"Welded stainless steel pipe and tube" refers to all welded tubular products made from stainless steel having a circular cross-sectional configuration with an actual outside diameter from .0375 to 6.525 inches inclusive.

"Marginal cost" is the increment to total cost that results from producing an additional increment of output.

"Average variable cost of production" is the sum of all costs that vary with changes in output divided by output, and includes, but is not limited to the cost of all raw materials and energy plus direct labor.

"Commercial justification" shall be a reason for pricing other than as prescribed in this order, which reason indicates, by virtue of commercial context, that such pricing was not intended to injure competition in the United States in welded stainless steel pipe and tube.

"United States" refers to the fifty states, the District of Columbia and Puerto Rico.

"Manufacturer" refers to any company which produces welded stainless steel pipe or tube.

"Exporter" refers to any company which sells welded stainless steel pipe or tube for export to customers located in the United States.

"Importer" refers to any company which imports welded stainless steel pipe or tube into the United States.

II. CONDUCT PROHIBITED

No respondent manufacturer shall sell for export to the United States, without commercial justification, any welded stainless steel pipe and tube manufactured in Japan at a price that is below the reasonably anticipated marginal cost. In determining whether costs are "reasonably anticipated," the Commission will assume that prices above average variable cost, as calculated by methods that are reasonably consistent for each respondent manufacturer from year to year, are above reasonably anticipated marginal cost.

No respondent exporter or importer shall sell or offer for sale in the United States, without commercial justification, welded stainless steel pipe and tube manufactured in Japan at a price that is below the reasonably anticipated marginal cost of the manufacturer plus incidental costs of said respondent exporter or importer. In determining whether a respondent exporter and importer has complied with this Order, the Commission will impute knowledge of suppliers' costs to respondent exporters and importer, which may be rebutted by the suppliers' affidavit under oath that (1) it will not supply its costs to the respondent exporters or importer, and (2) its price in the transaction in question is not less than the original manufacturer's reasonably anticipated marginal cost.

This order is applicable to any and all importations made after the date this order is published in the FEDERAL REGISTER, regardless of terms of sale, date of contract, etc.

III. REPORTING

Respondent manufacturers, exporters, and importers shall file with the Commission information sufficient in form and detail that the Commission can determine whether there is compliance with this Order. The first such report shall be due 120 days after the date this order becomes final. Subsequent reports shall be filed annually

[1] Vice Chairman Joseph O. Parker and Commissioner Catherine Bedell dissenting as to the determination of violation of section 337 and are not participating in the issuance of the subject order.

by each respondent beginning for each of them with a second report on a date not later than two months after the end of each respondents' fiscal year. A form for all reports required by this paragraph will be timely provided by the Commission. Respondent manufacturers and exporters who are no longer engaged in the manufacture or sale of welded stainless steel pipe and tube for export to customers in the United States may file a certificate under oath to that effect in lieu of the reports required by this paragraph.

Failure to report shall constitute a violation of this order.

IV. COMPLIANCE AND INSPECTION

For each year as to which (or as to any part of which) a report is required, each respondent manufacturer shall maintain business and accounting records on a basis consistent from year to year such that prices and all costs of producing welded stainless steel pipe and tube in Japan may be determined by examining these records. Such records shall also be adequate for determining each respondent manufacturer's total production for export from Japan to the United States of welded stainless steel pipe and tube manufactured by said respondent in Japan. All respondents shall maintain such records adequate to show each respondent's profits and losses by fiscal year for their operations relating to welded stainless steel pipe and tube manufactured in Japan for export to the United States. Such records shall be retained by each respondent for a period of at least three years after each required report is due.

V

Each respondent, upon written request by the Commission mailed to its principal office, shall furnish or otherwise make available to the Commission all books, ledgers, accounts, correspondence, memoranda, financial reports, and other records and documents in the possession or under the control of each respondent for the purposes of verifying any matter contained in the reports required under paragraph IV of this Order. The Commission may exercise, in the enforcement of this order, any of the information-gathering powers available to it under section 333 of the Tariff Act of 1930, 19 U.S.C. 1333.

VI

Information obtained by the means provided in paragraphs III and V above shall only be made available to the Commission or its representatives, shall be entitled to confidential treatment, and shall not be divulged by any representative of the Commission to any person other than a duly authorized representative of the Commission, except as required in the course of legal proceedings to which the Commission is a party for the purpose of securing compliance with this Order or as otherwise required by law, upon ten days notice to the respondent involved.

VII

Any violation of this Order shall allow action by the Commission in accordance with the provisions of section 337(f) (19 U.S.C. 1337(f)), including the revocation of this Order and the exclusion of the articles concerned from entry into the United States. Violation of this Order may also be the subject of action pursuant to section 333 of the Tariff Act of 1930 (19 U.S.C. 1333). In determining whether any respondent is in violation of this Order, the Commission may infer facts adverse to any respondent failing to provide adequate or timely information.

VIII. BONDING

The Secretary of the Treasury shall not require bond during the period of Presidential consideration of this action pursuant to section 337(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1337(g)).

IX. TERM

This order shall expire, unless earlier modified or revoked by the Commission, on December 31, 1982.

X. PUBLICATION

The Secretary will publish a copy of this "Commission Determination and Action" in the FEDERAL REGISTER; serve a copy upon all parties, and transmit a copy thereof, together with the record of this proceeding, to the President. The Secretary will also inform the Secretary of the Treasury of the Commission's determination on bonding.

XI. DISMISSALS

No person not specifically named in this order is subject to this order, and as to any such person, previously a party to this investigation, this investigation is hereby terminated.

Issued: February 22, 1978.

By order of the Secretary.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-5305 Filed 2-28-78; 8:45 am]

[7020-02]

[Investigation No. 337-TA-45]

CERTAIN COMBINATION LOCKS

Order Regarding Investigation

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued February 23, 1978.

MYRON R. RENICK,
Chief Administrative Law Judge.

[FR Doc. 78-5417 Filed 2-28-78; 8:45 am]

[7020-02]

[Investigation No. 337-TA-47]

CERTAIN FLEXIBLE FOAM SANDALS

Order Regarding Investigation

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued: February 23, 1978.

MYRON R. RENICK,
Chief Administrative Law Judge.

[FR Doc. 78-5415 Filed 2-28-78; 8:45 am]

[7020-02]

[Investigation No. 337-TA-38]

CERTAIN FOOD SLICERS

Order Regarding Investigation

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer is this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued: February 23, 1978.

MYRON R. RENICK,
Chief Administrative Law Judge.

[FR Doc. 78-5416 Filed 2-28-78; 8:45 am]

[7020-02]

[Investigation No. 337-TA-46]

CERTAIN TELESCOPIC SIGHT MOUNTS

Order Regarding Investigation

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued: February 23, 1978.

MYRON R. RENICK,
Chief Administrative Law Judge.

[FR Doc. 78-5418 Filed 2-28-78; 8:45 am]

[7020-02]

[Investigation No. 337-TA-3]

DOXYCYCLINE

Order Regarding Investigation

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald D. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued: February 23, 1978.

MYRON R. RENICK,
Chief Administrative Law Judge.

[FR Doc. 78-5414 Filed 2-28-78; 8:45 am]

[7020-02]

[303-TA-2]

LEATHER WEARING APPAREL FROM URUGUAY

Place of Public Hearing

Notice is hereby given that the public hearing in this matter scheduled to begin at 9:30 a.m., e.s.t., on Tuesday, March 14, 1978, in New York City, will be held in the auditorium of the United States Mission to the United Nations, 799 U.N. Plaza, 45th Street and First Avenue, New York, N.Y. (please use 45th Street entrance). Requests for appearance should be filed with the Secretary of the United States International Trade Commission, in writing, at his office in Washington, D.C., not later than noon, Thursday, March 9, 1978.

Notice of the investigation and hearing was published in the FEDERAL REGISTER of February 9, 1978 (43 FR 5593).

Issued: February 23, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-5413 Filed 2-28-78; 8:45 am]

[7020-02]

[AA1921-Inq.-10]

UNCOATED FREE SHEET OFFSET PAPER FROM CANADA

Inquiry and Hearing

The U.S. International Trade Commission (Commission) received advice from the Department of the Treasury (Treasury) on February 17, 1978, that, during the course of determining whether to institute an investigation with respect to chemical-wood-pulp based offset printing paper, containing less than 5 percent by weight mechanical wood pulp, whether or not cut to size or shape, not impregnated, not coated, not surface-colored, not embossed, not ruled, not lined, not printed, and not decorated from Canada in accordance with section 201(c) of the Antidumping Act of 1921, as amended (19 U.S.C. 160(c)), Treasury had concluded from the information available to it that there is substantial doubt that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of this merchandise into the United States. Therefore, the Commission on February 23, 1978, instituted inquiry AA1921-Inq.-10, under section 201(c)(2) of that act, to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevnted from being established, by reason of the importation of such merchandise into the United States.

The Treasury advised the Commission as follows:

DEAR MR. CHAIRMAN: In accordance with section 201(c) of the Antidumping Act of 1921, as amended, an antidumping investigation is being initiated with respect to offset paper from Canada. Pursuant to section 201(c)(2) of the Act, you are hereby advised that the information developed in our preliminary investigation has led to the conclusion that there is substantial doubt that an industry in the United States is being, or is likely to be, injured or is prevented from being established by reason of the importation of this merchandise into the United States.

Information available to Treasury indicates that imports of offset paper from Canada hold a small percentage of the U.S. market, with no significant recent expansion. For 1974, 1975, 1976, and the first 10 months of 1977, Canadian imports' market share, was, respectively, 2.1 percent, 1.7 percent, 2.0 percent, and 2.1 percent. During the same period the market share for domestic producers was 86.1 percent, 90.7 percent, 89.7 percent, and 89.0 percent. Canadian imports have merely recovered the slight decrease in market share experienced during the 1975 recession. There has been no significant effect on the U.S. domestic producers.

The paper industry, domestic and imports, experienced sharp drops in production during 1975, but the industry rebounded in 1976 and surpassed 1974 figures during the first 10 months of 1977. Data supplied by petitioner regarding profitability and capacity utilization tracks the pattern of decline followed by rebound evidenced by the raw production data. Capital investment by domestic producers provides no indication of injury and petitioner's scanty, selective data on unemployment provides insufficient evidence of injury. For these reasons, Treasury has concluded there is substantial doubt as to whether an industry in the United States is being, or is likely to be, injured.

Pursuant to the applicable provisions of law, it is requested that the Commission advise the Department as to whether it determines there is no reasonable indication that an industry in the United States is being, or is likely to be, injured or is prevented from being established by possible less-than-fair-value imports of offset paper from Canada under TSUSA item numbers 252.67 and 256.30.

For purposes of this investigation, as recommended by your Office of Nomenclature, "offset paper" means chemical-wood-pulp based offset printing paper, containing less than 5 percent by weight mechanical wood pulp, whether or not cut to size or shape, not impregnated, not coated, not surface-colored, not embossed, not ruled, not lined, not printed, and not decorated, provided for in the above-referred TSUSA item numbers.

Based on data submitted by petitioner, margins of sales at less than fair value appear to range from 3 to 16 percent on imports of subject merchandise from Canada.

Some of the enclosed data is regarded by Treasury to be of a confidential nature. It is therefore requested that the Commission consider all the enclosed information to be for the official use of the ITC only, not to be disclosed to others without prior clearance from the Treasury Department.

Sincerely yours,

ROBERT H. MUNDHEIM.

Hearing. A public hearing in connection with the inquiry will be held on Monday, March 13, 1978, beginning at 9:30 a.m., e.s.t., in the auditorium of the U.S. Mission to the United Nations, 799 U.N. Plaza, 45th Street and First Avenue, New York, N.Y. (please use 45th Street entrance). All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received in writing in the office of the Secretary to the Commission not later than noon Wednesday, March 8, 1978.

Written statements. Interested parties may submit statements in writing in lieu of, and in addition to, appearance at the public hearing. A signed original and 19 true copies of such statements should be submitted. To be assured of their being given due consideration by the Commission, such statements should be received no later than Monday, March 13, 1978.

Issued: February 23, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-5306 Filed 2-28-78; 8:45 am]

[1505-01]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 77-19]

PHENMETRAZINE QUOTAS—1977

Correction

In FR Doc. 78-3959 appearing at page 6169-76 in the FEDERAL REGISTER of Monday, February 13, 1978 and corrected at page 7488 in the FEDERAL REGISTER of Thursday, February 23, 1978, the following changes should be made in the issue of February 23, 1978 on page 7488:

1. In correction econd line, the word "work" should read "word".

2. In correction 4, third line, the word "work" should read "word".

3. In correction 5, in the table under the paragraph numbered 77, the number "2,477 under "NPA" should read "2,466.

[6820-35]

LEGAL SERVICES CORPORATION

GRANTS AND CONTRACTS

FEBRUARY 22, 1978.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant applications submitted by:

1. Inland Counties Legal Services in Riverside, California to serve the migrant farmworkers in the Coachella Valley.

2. Legal Aid Association of Ventura County in Oxnard, California to serve the migrant farmworkers in Ventura and Southern Santa Barbara counties.

3. California Rural Legal Services in San Francisco, California to serve the migrant farmworkers in the Salinas and Imperial Valleys and also the migrant population in the areas now served by CRLA's Delano and Madera offices.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, San Francisco Regional Office, 690 Market Street, San Francisco, Calif. 94104.

THOMAS EHRLICH,
President.

[FR Doc. 78-5300 Filed 2-28-78; 8:45 am]

[6820-35]

GRANTS AND CONTRACTS

FEBRUARY 22, 1978.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Service Corporation hereby announces publicly that it is considering the grant application submitted by:

Southern Arizona Legal Services in Tucson, Arizona to serve Santa Cruz and Cochise counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Denver Regional Office, 1726 Champa Street, Suite 500, Denver, Colo. 80202.

THOMAS EHRLICH,
President.

[FR Doc. 78-5301 Filed 2-28-78; 8:45 am]

[6820-35]

GRANTS AND CONTRACTS

FEBRUARY 23, 1978.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant applications submitted by:

Central Minnesota Legal Services in Minneapolis, Minnesota to serve Meeker county.

Southern Minnesota Regional Legal Services in St. Paul, Minnesota to serve Fillmore and Houston counties.

Legal Aid Service of Northeast Minnesota in Duluth, Minnesota to serve Koochiching counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Ill.

THOMAS EHRLICH,
President.

[FR Doc. 78-5302 Filed 2-27-78; 8:45 am]

[6820-35]

GRANTS AND CONTRACTS

FEBRUARY 23, 1978.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant applications submitted by:

East Mississippi Legal Services in Meridian, Mississippi to serve Scott and Lauderdale counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Atlanta Regional Office, 615 Peachtree Street NE., 9th Floor, Atlanta, Ga. 30308.

THOMAS EHRLICH,
President.

[FR Doc. 78-5303 Filed 2-28-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-466]

ALLENS CREEK NUCLEAR GENERATING STATION, UNIT NO. 1

Notice of Availability of Draft Supplement to the Final Environmental Statement

Notice is hereby given that a Draft Supplement to the Final Environmental Statement (NUREG-0428) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed construction of the Allens Creek Nuclear Generating Station (ACNGS), Unit No. 1, by the Houston Lighting & Power Company. The proposed station is to be located in Austin County, Texas.

The Supplement identifies the project changes resulting from the deferral and subsequent rescheduling of Unit No. 1 and the cancellation of Unit No. 2 of the initially proposed

two-unit station for the Allens Creek site. It also assesses the associated changes in the environmental impact and adverse effects that were evaluated in the FES and in staff testimony at hearings before the Atomic Safety and Licensing Board.

The Draft Supplement is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C., and in the Sealy Public Library, 415 Main Street, Sealy, Tex. The Draft Supplement is also being made available at the Houston-Galveston Area Council, 3701 West Alabama Avenue, Sealy, Tex. 77027. Requests for copies of the Draft Supplement should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Director, Division of Document Control.

Interested persons may submit comments on the Draft Supplement to the FES for the Commission's consideration. Federal, State, and specified local agencies are being provided with copies of the Draft Supplement (local agencies may obtain these documents upon request).

Comments by Federal, State and local officials, or other members of the public received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and the Sealy Public Library, 415 Main Street, Sealy, Tex. Upon consideration of comments submitted with respect to the Draft Supplement, the Commission's staff will prepare a Final Supplement, the availability of which will be published in the FEDERAL REGISTER. Comments are due by April 17, 1978.

Comments on the Draft Supplement from interested members of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Bethesda, Maryland, this 24th day of February 1978.

For the Nuclear Regulatory Commission.

ROBERT P. GECKLER,
Acting Chief, Environmental Projects Branch No. 1, Division of Site Safety and Environmental Analysis.

[FR Doc. 78-5353 Filed 2-28-78; 8:45 am]

[7590-01]

[Project Nos. P-657 and P-657A]

NEW YORK STATE ELECTRIC & GAS CORP. AND LONG ISLAND LIGHTING CO.

Receipt of Partial Application for Construction Permit and Facility License: Time for Submission of Views on Antitrust Matters

New York State Electric & Gas Corp. and the Long Island Lighting Co. (applicants), pursuant to section 103 of the Atomic Energy Act of 1954, as amended, filed one part of an application, dated January 10, 1978, in connection with their plans to construct and operate 2 pressurized water reactors at either the "New Haven" site, near Lake Ontario, or the "Stuyvesant" site, near the Hudson River in New York State. The designated site will be identified in the Preliminary Safety Analysis Report and Environmental Report, which are scheduled to be submitted in October and November 1978, respectively. Upon receipt of the remaining portions of the application dealing with radiological health and safety and environmental matters, separate notices of receipt will be published by the Commission including an appropriate notice of hearing.

The portion of the application filed contains the information requested by the Attorney General for the purpose of an antitrust review of the application as set forth in 10 CFR 50, Appendix L.

A copy of the partial application is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555. Project Nos. P-657 and P-657A have been assigned to the application and should be referenced in any correspondence relating to it.

Any person who wishes to have their views on the antitrust matters of the application presented to the Attorney General for consideration or who desires additional information regarding the matter covered by this notice, should submit such views or requests for additional information to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, on or before April 24, 1978.

Dated at Bethesda, Md., this 14th day of February 1978.

For the Nuclear Regulatory Commission.

OLAN D. PARR,
Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc. 78-4538 Filed 2-21-78; 8:45 am]

[3110-01]

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 February 21, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division of office.

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, of from the reviewer listed.

NEW FORMS

NATIONAL SCIENCE FOUNDATION

Survey of State Agency Research and Development, RD-1 and 2, single time, State government agencies, Laverne V. Collins and Ellett, C. A., 395-3214.

Publishing Policies and Practices Survey, single time, sample of editors and publishers of scientific journels, Laverne V, Collins, Office of Federal Statistical Policy and Standards, 395-3214.

Activities of Sciences and Engineering Faculty in Universities and 4-Year Colleges, single time, science and engineering faculty in 4 year colleges and universities, Laverne V. Collins, 395-3214.

SMALL BUSINESS ADMINISTRATION

Small Business Development Center Program Evaluation, single time, business firms, economics and general government division, Reese B. F., 395-3451.

NATIONAL SCIENCE FOUNDATION

Survey of Local Government Research and Development, RD-4, 4A, and 4, single time, 2,000 largest local governments, Laverne V. Collins and Ellett, C. A., 395-3214.

DEPARTMENT OF COMMERCE

Bureau of Census:

Agriculture Questionnaire, Listing Sheet, single time, farms, Ellett, C. A., 395-6132.

Agriculture Questionnaire, Listing Page, 78-A1(PR), 78-A3(PR), single time, farms, Ellett, C.A., Office of Federal Statistical Policy and Standard, 395-6132.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration (Medicare), Medicare Second Surgical Opinion Demonstration Projects, HCFA - 36T, 37T, and 38T, on occasion, 7,750 requesters of second surgical opinions, Human Resources Division, Richard Eisinger, 395-3532.

REVISIONS

DEPARTMENT OF STATE (EXCLUDING AID AND ACTION)

Application for Confidential Verification of Birth, DSP-16, on occasion, Registrar of Vital Statistics Office, 1,000 responses, 100 hours, Marsha Traynham, 395-3773.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration:

1978 Survey of Widows Without Benefits, SSA-3584, single time, widows, 3,000 responses, 1,000 hours, Office of Federal Statistical Policy and Standard, 673-7959.

Report of Continuing Disability Interview, SSA-454, on occasion, persons entitled to disability benefits, 300,000 responses, 75,000 hours, Caywood, D. P., 395-3443.

EXTENSIONS

DEPARTMENT OF ENERGY

National Survey of Compensation Paid S7E's Engaged in Research and Development, annually, R. & D. establishments, 325 responses, 4,190 hours, Laverne V. Collins, 395-3214.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control, Trade Name Request Form for NOHS, CDC NIOSH 09, on occasion, chemical manufacturers, 20,000 responses, 5,000 hours, Ellett, C. A., 395-6132.

DEPARTMENT OF JUCTICE

Immigration and Naturalization Service:

Crewmans Landing Permit. I-95A, on occasion, alien crewman, 150,000 responses, 25,000 hours, Marsha Traynham, 395-3773.

Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa, I-130, on occasion, U.S. citizen, permanent resident, 200,000 responses, 100,000 hours, Marsha Traynham, 395-3773.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-5440 Filed 2-28-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 10124; 812-4239]

AMERICAN MEDICAL ASSOCIATION TAX-EXEMPT INCOME FUND INC., AND CONTINENTAL ILLINOIS NATIONAL BANK & TRUST CO. OF CHICAGO

Filing of Application of the Act for an Order of the Commission Exempting Certain Transactions

FEBRUARY 17, 1978.

Notice is hereby given that American Medical Association Tax-Exempt Income Fund, Inc. (the fund), a Maryland corporation, 535 North Dearborn Street, Chicago, Ill. 60610, and Continental Illinois National Bank & Trust Co. of Chicago (the adviser) (hereinafter collectively referred to as the applicant) 231 South LaSalle Street, Chicago, Ill. 60693, filed an application on December 5, 1977, pursuant to section 10(f) of the Investment Company Act of 1940 (the Act), for an order of the Commission exempting certain transactions of the Fund from the provisions of section 10(f) of the Act so as to permit the Fund to purchase municipal bonds (as hereinafter defined) in public offerings in which the Fund's investment adviser participates as a principal underwriter, subject to certain conditions specified in the application and set forth below. All interested persons are referred to the application which is on file with the Commission for a statement of the representations made therein, which are summarized below.

The Fund is a diversified open-end, management investment company and is registered under the Act. On September 30, 1977, the Fund filed a registration statement on Form N-8B-1 pursuant to section 8(b) of the Act. On that same date it also filed a registration statement on Form S-5 under the Securities Act of 1933 in order to be able to commence a distribution of shares of common stock, which has not as yet been declared effective. The Fund's investment objective is to provide shareholders, through investment in and active management of a diversified portfolio of municipal bonds, as high a level of Federally tax-exempt income as is consistent with prudent investment and preservation of capital. In seeking this objective, the adviser proposes to invest at least 80 percent of the Fund's assets in a diversified portfolio consisting primarily of fixed-income obligations issued by or on behalf of States, territories, and possessions of the United States and the District of Columbia and their political subdivisions, agencies, and instrumentalities, including municipalities and multistate agencies, the interest on which is exempt from Federal income taxation (such obligations being referred to hereinafter as municipal bonds). However, the above percentage may be reduced for temporary periods in circumstances which, in the opinion of the adviser, require a defensive position for protection of the Fund's stockholders. The Fund also anticipates that from time to time it may invest a portion of its assets (not to exceed 20 percent of the Fund's assets, except as indicated above) in temporary investments, the income from which may be subject to Federal income taxation.

The Fund and the adviser are parties to an investment advisory agreement pursuant to which the adviser provides specified management services to the Fund in return for a set fee. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. Accordingly, the Fund and the adviser are each an affiliated person of each other as that term is defined in section 2(a)(3) of the Act.

The Adviser is a major commercial bank and trust company and dealer and underwriter in municipal and government obligations and other types of securities. Through its municipal securities division the adviser participates as an underwriter in a substantial number of public offerings of municipal bonds.

Three of the five members of the Fund's board of directors are interested persons of the Fund. The remaining two directors are not interested persons of the Fund.

Section 10(f) of the Act, in pertinent part, provides that no registered investment company shall knowingly purchase or acquire, during the existence of any underwriting or selling syndicate, any security a principal underwriter of whiich is an officer, director, investment adviser, or employee of such investment company, or is a person of which any such officer, director, investment adviser, or employee is an affiliated person. That section further provides that the Commission, by rules or regulations upon its own motion or by order upon application, may exempt any transaction or classes of transactions from the restrictions contained therein to the extent such exemption is consistent with the protection of investors.

Pursuant to the rulemaking authority granted by section 10(f), the Commission adopted rule 10f-3 in 1958. The rule provides that a purchase of securities by a registered investment company prohibited by section 10(f) of the Act shall be exempt from the provisions of that section if certain conditions are satisfied. The applicants note that rule 10f-3 was designed for underwritten offerings of corporate equity and debt securities, whereas they intend to invest primarily in municipal bonds. The applicants assert that underwritten offerings of municipal bonds are conducted under different terms and conditions than corporate underewritings and for several reasons do not fit within the framework of rule 10f-3. For example, there is no registration requirement for municipal bonds under the Securities Act of 1933 as required by section (a)(1) of rule 10f-3. Therefore, the Fund will be precluded from being able to take advantage of the exemption afforded by the rule and will be unable to purchase municipal bonds in public offerings in which the adviser participates as a "principal underwriter," as such term is defined in section 2(a)(29) of the Act.

It is the applicants' contention, as stated in its application, that due to the special nature of the municipal bond markert and its emphasis on dus-

tributions through underwriting syndicates, the Fund must have access to the primary underwriting market in order to obtain best price and execution in the accumulation of portfolio securities. Because of the large participation of the adviser in these underwritings, the applicants believe that the prohibitions of section 10(f) would, unless modified, prejudice the Fund by precluding access to a significant portion of the municipal bond market. The applicants state that although there may be a large secondary market in municipal bonds, this secondary market lacks the depth and liquidity of the corporate bond or short-term securities market and is more susceptible to sharp price fluctuations.

In order for the Fund to participate in public offerings of municipal bonds in which the adviser is a "principal underwriter," the applicants seek an order of the Commission exempting its proposed future purchases of municipal bonds from Section 10(f) on the basis of the terms set forth below, which are discussed in the application. These terms are based upon rule 10f-3 appropriately revised for the purposes of the requested exemptive order to reflect the special nature of the municipal bond market.

TERMS OF THE PROPOSED ORDER

The exemptive order sought by the applicants would be subject to the following conditions (paragraph references are keyed to the text of rule 10f-3):

(a) The securities to be purchased shall be:

(1) Part of an issue of municipal bonds, the interest on which is exempt from Federal income tax, which is being offered to the public;

(2) Purchased at not more than the public offering price prior to the end of the first full business day after the first date on which the issue is offered to the public;

(3) Offered pursuant to an underwriting agreement under which the underwriters are committed to purchase all of the municipal bonds being offered, if the underwriters purchase any thereof;

(4) Acquired pursuant to an order (which may be conditional) placed by or for the account of the Fund with an underwriter not earlier than 2 days after the first public announcement of the offering and prior to the first date on which the issue is offered to the public;

(5) Purchased in an unsolicited transaction originating with the Fund or its investment adviser; and

(6) Purchased in transactions for which records are maintained setting forth the reasons for the purchase and for the sale, if any, of any portfolio securities related to the transaction, which records shall be available for inspection by the Commission.

(b) The gross commission, spread or profit to the principal underwriters shall not exceed 2.5 percent of the principal amount of the issue.

(c) On the date of purchase the issue shall have received an investment grade rating, including conditional or provisional ratings, from Standard & Poor's Corp. or Moody's Investors Service, Inc., *Provided, however,* If the issuer of the securities to be purchased, or the entity supplying the revenues from which the issue is be paid, shall have been in continuous operation for less than 3 years, including the operations of any predecessor, then on the date of purchase the issue shall have received a rating of "A" or better from Standard & Poor's Corp. or Moody's Investors Service, Inc.

(d) The principal amount of municipal bonds to be purchased by the Fund or by the Fund and any other investment companies having the same investment adviser, shall not exceed 3 percent of the principal amount of the issue being underwritten or $500,000 in principal amount, whichever is greater, but in no event greater than 10 percent of the principal amount of the issue.

(e) The consideration to be paid by the Fund in purchasing the municipal bonds being offered shall not exceed 3 percent of the total assets of the Fund; *Provided,* That if such consideration shall exceed $1,000,000, it shall not exceed 2 percent of the Fund's total assets.

(f) The exemptive order shall not be construed to permit transactions with any affiliated person or principal underwriter of the Fund or any affiliated person thereof (including purchases from syndicate managers designated as group sales or otherwise allocated to the account of such affiliated person or principal underwriter) which would otherwise be prohibited by section 17 of the Investment Company Act of 1940; the Fund having represented that it will keep its noninterested directors completely informed, and fully aware, of the available alternatives with respect to recapture of the costs of portfolio transactions and having undertaken to take such steps as may be necessary to seek to implement any such recapture, including the filing of applications for exemptions under the Investment Company Act of 1940, if the noninterested directors should determine that recapture is in the best interests of the Fund or if otherwise required by developments in the law.

(g) The purchase of the securities being offered shall have been authorized or approved by a resolution of the board of directors of the Fund, or of a committee composed of at least three members of such board (a majority of which must be noninterested persons of the Fund), which resolution shall state that in the judgment of the board or committee, the purchase of securities proposed will meet all the requirements of paragraphs (a) through (f) of this exemptive order and which authorization or approval shall have been supported by the vote (by a meeting or by written consent given without a meeting) of not less than a majority of the members of the board of directors or of the committee who were not interested persons of the Fund.

(h) The Fund shall set forth all transactions conducted pursuant to the exemptive order in its quarterly reports filed with the Securities and Exchange Commission on Form N-1Q. In addition, information as to such transactions shall be contained in the notes to the Fund's published financial statements.

(i) The officers and directors of the Fund and its investment adviser assume the burden of establishing that each transaction made pursuant to the exemptive order is consistent with the purpose of such order to assure that the selection of the Fund's portfolio securities is in the interest of the Fund's security holders rather than in the interest of its affiliated persons or in the interest of underwriters, brokers, or dealers.

The applicants state that, as set forth in Investment Company Act Release No. 2797 (December 2, 1958), the conditions to the exemption from section 10(f) contained in Rule 10f-3 are designed to permit purchases without an exemptive order where the circumstances are such as to make it unlikely that the purchase will be inconsistent with the protection of investors. The applicants contend in their application that the exemption sought from the prohibitions of section 10(f) is consistent with the protection of investors. The applicants further contend that the terms of the exemption sought in the application attempt to incorporate the substantive provisions of Rule 10f-3 into a framework taking into account the realities of municipal bond underwritings so as to permit effective use of the exemption and at the same time making it unlikely that a purchase thereunder will be inconsistent with the protection of investors.

Notice is further given that any interested person may, not later than March 13, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of

such request shall be served personally or by mail upon the applicants at the addresses stated above. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-5341 Filed 2-28-78; 8:45am]

[8010-01]

[Release No. 14488; SR-Amex-77-34]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

FEBRUARY 17, 1978.

On December 27, 1977, the American Stock Exchange, Inc. ("Amex") 86 Trinity Place, New York, N.Y. 10006, filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975 and rule 19b-4 thereunder, copies of a proposed rule change which requires that applicants for membership pass a floor qualification examination before being permitted to execute orders on the exchange floor.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission release (Securities Exchange Act Release No. 14341, January 5, 1978) and by publication in the FEDERAL REGISTER (43 FR 1854, January 12, 1978).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of section 6 and the rules and regulations thereunder. More specifically, the Commission finds that the proposed rule change is consistent with section 6(c)(3)(A) of the Act which permits a national securities exchange to examine and verify the qualifications of an applicant to become a member of the exchange.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-5342 Filed 2-28-78; 8:45 am]

[8010-01]

[Release No. 20418; 70-6119]

CONNECTICUT LIGHT & POWER CO.

Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

FEBRUARY 21, 1978.

Notice is hereby given that the Connecticut Light & Power Co. ("CL&P"), Selden Street, Berlin, Conn. 06037, a public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating section 6(b) of the Act and rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested parties are referred to said application, which is summarized below, for a complete statement of the proposed transaction.

CL&P proposes to issue and sell, at competitive bidding, up to $40 million principal amount of its first and refunding mortgage —— percent bonds, series EE, due March 1, 2008. The interest rate, which shall be a multiple of ⅛ of 1 percent, and the price, exclusive of accrued interest, to be paid to CL&P, which will be not less than 99 percent nor more than 102.75 percent of the principal amount thereof, will be determined by competitive bidding. The bonds will be issued under the indenture of mortgage and deed of trust dated as of May 1, 1921, between CL&P and Bankers Trust Co., trustee, as supplemented and amended from time to time, and as to be further supplemented by a supplemental indenture to be dated March 1, 1978. The supplemental indenture provides, among other things, that the bonds shall not be redeemed at the applicable general redemption price prior to March 1, 1983, if such redemption is for the purpose of or in anticipation of refunding such bonds through the use, directly or indirectly, of funds borrowed by CL&P at an effective interest cost of less than the effective interest cost of the bonds.

The net proceeds from the sale of the bonds will be used by CL&P primarily to repay a portion of the company's short-term borrowings estimated to total $65,000,000 at the time of such sale. Such short-term borrowings were applied to finance CL&P's 1977-1978 construction program.

The Company's 1978 construction program expenditures are expected to total about $123,700,000, including approximately $5,000,000 for nuclear fuel. In addition to the sale of the bonds, the Company estimates that it will require an additional $85,300,000 of funds from external sources to complete its 1978 construction program and to pay at maturity $16,000,000 of 3 percent bonds in 1978. It expects to obtain such funds temporarily through short-term borrowings. In addition, if the company is successful in selling its 12 percent interest in Seabrook, N.H., nuclear units, approximately $73,000,000 of proceeds will be available to it.

A statement of the fees and expenses incurred or to be incurred in connection with the proposed transactions will be supplied by amendment. The approval of the Connecticut Public Utilities Control Authority is required for the issuance of the bonds. It is represented that no other state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than March 14, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-5343 Filed 2-28-78; 8:45 am]

[8010-01]

[File Nos. 3-5369; 81-305]

COUNTRY KITCHEN INTERNATIONAL, INC.

Application and Opportunity for Hearing

FEBRUARY 17, 1978.

Notice is hereby given that Country Kitchen International, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order granting Applicant an exemption from the provisions of section 15(d) of the 1934 Act.

The Applicant states, in part:

1. Pursuant to an Agreement of Merger dated June 14, 1977, CC-2, Inc., an indirect subsidiary of Carlson Cos., Inc., was merged into the Applicant, effective November 17, 1977. As a result of said merger, all of the remaining public stockholders of the above Company became entitled to receive $10 per share in cash, which shares were extinguished and canceled as a matter of law on said effective date.

2. As of said effective date, CC-1, Inc., the parent of CC-2, Inc., and a direct subsidiary of Carlson Cos., Inc., became the sole stockholder of the Applicant, and no further trading has been effected in the stock of the above Company.

3. The Applicant has filed with the Commission its Form 10-Q for the period ended September 30, 1977, and a Form 8-K to reflect said merger.

Accordingly, the Applicant believes that the granting of the exemption would not be inconsistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW.,Washington, D.C.

Notice is further given that any interested person not later than March 14, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-5344 Filed 2-28-78; 8:45 am]

[8010-01]

[Release No. 10125; 812-4186]

MASSACHUSETTS MUTUAL LIFE INSURANCE CO. AND MASSMUTUAL INCOME INVESTORS, INC.

Filing of Application for Order

FEBRUARY 21, 1978.

Notice is hereby given that Massachusetts Mutual Life Insurance Co. (the "Insurance Company") and MassMutual Income Investors, Inc. (the "Fund"; referred to hereinafter together with the Insurance Company as "Applicants"), 1295 State Street, Springfield, Mass. 01111, a closed-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), have filed an application on September 8, 1977, and amendments thereto on October 3, 1977, December 17, 1977, and January 9, 1978, for an order of the Commission: (1) pursuant to section 17(b) of the Act exempting from the provisions of section 17(a) of the Act a proposed sale by the Insurance Company to the Fund of $2,000,000 principal amount of 9% 20-Year Senior Notes (the "Notes") of MEI Corp. ("MEI") at the price paid by the Insurance Company for the purchase of the Notes transferred, plus accrued interest, and (2) pursuant to section 17(d) of the Act and Rule 17d-1 thereunder permitting the Insurance Company and the Fund to purchase, from MEI, $15,500,000 principal amount and $1,000,000 principal amount, respectively, of the Notes. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that MEI is issuing, at direct placement, $22,000,000 aggregate principal amount of the Notes, and that the Insurance Company has been offered for purchase the entire amount of that issue. According to the application, the Notes are unsecured and contain no provisions subordinating the Notes to any other indebtedness of MEI. Applicants further state that on December 2, 1977, the Insurance Company purchased $5,500,000 principal amount of the Notes and that it is planned that the remainder of the Notes will be purchased at a second closing occuring sometime in 1978.

Applicants assert that the Insurance Company, which is the investment adviser of the Fund, believes the Notes to be an attractive investment for the Fund. Accordingly, Applicants propose that the Fund invest in the Notes in the following manner.

First, Applicants propose ("First Proposal") that the Fund purchase from the Insurance Company $2,000,000 principal amount of the $5,500,000 principal amount Notes purchased by the Insurance Company at the first closing. The price of the Notes sold to the Fund would be the price paid by the Insurance Company for such Notes plus accrued interest running from December 2, 1977 (the date of the first closing) to the date of the Fund's purchase. Upon purchase, the Fund will be bound by the same terms and conditions subject to which the Insurance Company presently holds such securities. The Applicants state that the purchase of the Notes by the Fund will occur only if the Commission issues the exemptive order requested herein on or before March 31, 1978. If that order is issued, the purchase will be made within one month after such issuance; if the exemption is not granted on or before March 31, 1978, then the Insurance Company will retain for investment the entire amount of the Notes purchased at the first closing. Applicants state that the Fund will not purchase any Notes from the Insurance Company unless such purchase has been approved by a majority vote of the directors of the fund who are not interested persons of the Insurance Company.

Second, Applicants propose ("Second Proposal") that the Insurance Company and the Fund investment concurrently in the $16,500,000 principal amount of the Notes to be issued at the second closing. Applicants state that the Insurance Company and the Fund would purchase $15,000,000 principal amount and $1,000,000 principal amount of the Notes, respectively. Applicants state, however, that the second closing is contingent upon certain closing conditions being met. These closing conditions provide generally that MEI must be in the same business and financial condition as it was at the time of the first closing. If the closing conditions are not met then the Insurance Company and the Fund each have the right to refrain from purchasing the Notes scheduled to be issued at the second closing. Further, Applicants state that the Fund will not purchase any of the Notes from MEI at the second closing unless the Insurance Company purchases $15,500,000 in principal amount of the Notes from MEI at such closing.

The Applicants assert that the Insurance Company holds warrants, exercisable at any time prior to February 1, 1983, to purchase up to 190,532 shares of MEI common stock at a price of $2.29 per share and warrants, exercisable at any time prior to June 1, 1984, to purchase up to 53,571 shares of MEI common stock at a price of $5 per share (hereinafter "MEI Warrants"). Applicants also assert the Insurance Company holds a 7¼% Senior Note due 1983 of Beverages, Inc., a wholly-owned subsidiary of MEI, in the outstanding principal amount of

$1,990,000 ("Beverage Note"). Applicants state that the Fund owns no securities of MEI or any of its subsidiaries.

Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser thereof.

Section 17(a) of the Act provides, in part, that it is unlawful for any affiliated person of a registered investment company, acting as principal, knowingly to sell any security to such registered investment company. Section 17(b) of the Act generally provides that, upon application, the Commission shall exempt a proposed transaction from the provisions of section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Applicants request an order pursuant to section 17(b) of the Act exempting from the provisions of section 17(a) of the Act the First Proposal, involving the sale by the Insurance Company of Notes to the Fund, Applicants state that the terms of the transfer are reasonable and fair and do not involve any overreaching on the part of either the Insurance Company or the Fund since: (1) the consideration paid by the Fund would equal the price paid by the Insurance Company for the Notes, plus accrued interest, and (ii) the Insurance Company is retaining over half of the Notes purchased by it on December 2, 1977, thus sharing with the Fund the risk that the Notes may prove to be a poor investment. Applicants also state that the proposed transaction is consistent with: (i) the policy of the Fund as recited in its registration statements, and (ii) the general purposes of the Act.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide, in part, that it is unlawful for an affiliated person of a registered investment company, acting as principal, to effect any transaction in which such registered investment company is a joint participant, without the permission of the commission. Rule 17d-1 provides, in part, that in passing upon applications for orders granting such permission, the Commission will consider: (1) whether the participation of the investment company in such transaction on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and (2) the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants request an order pursuant to section 17(d) of the Act and Rule 17d-1 thereunder permitting the Insurance Company to participate in the Second Proposal, involving the joint purchase by the Insurance Company and the Fund of Notes from MEI. Applicants assert that: (i) the Insurance Company and the Fund are purchasing the Notes on the same basis and not on a basis more favorable to the Insurance Company than to the Fund, and (ii) the purchase is consistent with the provisions, policies, and purposes of the Act. Applicants assert further that the Insurance Company considers the Notes a sound investment and that it would be to the Fund's disadvantage not to purchase a portion of the Notes.

Applicants state that the interest of the Insurance Company in the MEI warrants and the Beverage Notes had no effect on the decision of the Insurance Company that the Notes are an attractive investment for both the Insurance Company and the Fund. They also state that the Notes are a type of security in which the Fund's investments are restricted to 25% of its total assets, and that the Fund has approximately $36,000,000 in assets which may be invested in this type of security. Applicants assert that the decision for the Fund to purchase 3,000,000 principal amount of the Notes was made by balancing the belief by the Applicants that long-term interest rates would not move significantly higher than 9% versus the desirability of the Fund's maintaining a liquid position.

Notice is further given that any interested person may, not later than March 17, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-5345 Filed 2-28-78; 8:45 am]

[8010-01]

[Release No. 10129; 812-4193]

MASSACHUSETTS MUTUAL LIFE INSURANCE CO., AND MASSMUTUAL INCOME INVESTORS, INC.

Filing of Application for Order

FEBRUARY 22, 1978.

Notice is hereby given that Massachusetts Mutual Life Insurance Co. ("Insurance Company"), and MassMutual Income Investors, Inc. ("Fund"), 1295 State Street, Springfield, Mass. 01111, closed-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), (hereinafter collectively referred to as "Applicants"), have filed an application on September 26, 1977, and amendments thereto on November 14, 1977, and February 1, 1978, (1) pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, for an order of the Commission permitting the Insurance Company to purchase $9,000,000 principal amount and the Fund to purchase $3,000,000 principal amount at direct placement of a new issue of 8.5% 20-year senior notes ("Notes") of Mead Corp. ("Mead"), and (2) alternatively, in the event the Insurance Company purchases $12,000,000 in principal amount of the Notes before the issuance of such order, for an order pursuant to Section 17(b) of the Act exempting from the provisions of Section 17(a) of the Act the sale of $3,000,000 in principal amount of the Notes plus accrued interest by the Insurance Company to the fund. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the Notes are a portion of an aggregate principal amount of $75,000,000 of Notes to be issued by Mead with no discount or premium. Before the purchase by the Insurance Company of any of this issue of Notes, the Insurance Company held $1,600,000 in principal amount of Mead's 8.50% debentures due 1995 ("Mead Debentures"). The Fund owns no securities of Mead.

Applicants state that the Insurance Company purchased $3,000,000 in principal amount of Notes at a closing which took place December 22, 1977, and they expect that the remaining principal amount of Notes will be issued at a closing to occur between April 1, 1978 and June 30, 1978 ("Later Closing").

The Insurance Company is the investment adviser for the Fund. Applicants represent that in the judgment of the Insurance Company the Notes would be an attractive investment for the Fund, and the Insurance Company understands that Mead is willing to sell a portion of the Notes to the Fund. Applicants state that the Fund will not pay any commission to any intermediary in connection with this transaction. They state further that any modification, amendment, or waiver affecting the loan agreements or the Notes will affect the Fund and the Insurance Company equally.

Applicants propose the following alternative arrangements, depending upon the issuance of the requested Commission order prior to the Later Closing, or subsequent to the Later Closing.

I. Should the Commission order sought herein issue prior to the Later Closing, Applicants contemplate that the Fund will enter into note purchase agreements with Mead providing for purchase by the Fund of $3,000,000 principal amount of the Notes at the Later Closing and purchase by the Insurance Company of $9,000,000 of the Notes from Mead at the Later Closing.

According to the application, the note purchase agreements would contain customary closing conditions, and if the closing conditions were not satisfied at the time of the Later Closing, the Applicants would have the right to refrain from purchasing the Notes scheduled to be issued at such closing. However, Applicants state that the Fund will not purchase any Notes from Mead at the second closing unless the Insurance Company purchases $9,000,000 in principal amount of Notes from Mead at such closing. Applicants represent that if the Fund purchases Notes from Mead at the Later Closing, the Fund will pay the same price as the Insurance Company for the Notes.

II. Should the Commission order sought herein issue subsequent to the Later Closing, Applicants represent that, pending receipt of such an order, the Insurance company is prepared to commit to purchase for its general account $12,000,000 in principal amount of Notes at such closing, subject to the obligation to transfer to the Fund $3,000,000 in principal amount of the Notes acquired by the Insurance Company at the Later Closing. Applicants state that such obligation is subject to receipt of a favorable commission order issued within three months of the Later Closing.

Applicants state that the price to be paid by the Fund for the Notes will be equal to the price paid by the Insurance Company for the Notes, plus accrued interest from the date of the Insurance Company's purchase to the date of transfer.

With respect to such transfer of Notes from the Insurance Company to the Fund, Applicants state that (1) if a favorable Commission order is issued within thirty days after the Later Closing, the Insurance Company will transfer the Notes to the Fund as soon as practicable; or, alternatively, (2) if a favorable Commission order is issued more than thirty days after the Later Closing but within three months after such closing the Fund will not purchase any Notes from the Insurance Company unless such purchase has been approved by a majority vote of the Directors of the Fund who are not interested persons of the Insurance Company ("Required Vote"). Applicants state that the Required Vote will take place within 45 days of receipt of a favorable order, and that the Insurance Company will transfer the Notes to the Fund as soon as practicable after such transfer is approved by the Required Vote.

According to the application, the purpose of the 45 day time allowance for the Required Vote is to allow for the scheduling of a meeting of such Directors. The application further states that such meetings are generally held no more often than once a month.

Should the requested Commission order not issue, Applicants state that all the Notes purchased by the Insurance Company will be retained by it for investment.

Section 2(a)(3) of the Act includes, within the definition of the term "affiliated person" of an investment company, the investment adviser to the investment company. Therefore, as the investment adviser to the Fund, the Insurance Company is an affiliated person of the Fund.

Section 17(d) of the Act, and Rule 17d-1 thereunder, taken together, provide, in part, that it is unlawful for an affiliated person of registered investment company, acting as principal, to effect any transaction in which such investment company is a joint participant, without the permission of the Commission. Rule 17d-1 provides, in part, that in passing upon applications for orders granting such permission, the Commission will consider (1) whether the participation of the investment company in such transaction on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and (2) the extent to which such participation is on a basis different from or less advantageous than that of other participants.

With respect to alternative I, above, the Applicants submit that unless the application is granted, Rule 17d-1 might arguably prevent the Fund from acquiring any of the Notes from Mead in connection with a transaction in which other Notes were being acquired from Mead by the Insurance Company. Applicants state that in the absence of the requested order, the Insurance Company would exclude the Fund and participate only for its own general fund, even though, in the judgment of the Insurance Company, the Notes are an attractive investment for the Fund.

Applicants argue that the Insurance Company and the Fund will be purchasing Notes on the same basis and not on a basis more favorable to the Insurance Company than to the Fund. In the judgment of the Insurance Company, the Notes provide an attractive yield and represent a sound investment; thus, the Applicants assert that the Fund would be disadvantaged if it was not permitted to acquire a portion of the new issue of Notes. They assert further that the purpose of the application is to avoid a disadvantage to the Fund, and that the interest of the Insurance Company in the Mead Debentures has had no effect on the decision of the Insurance Company that the Notes are an attractive investment for both the Insurance Company's general account and for the Fund.

The Insurance Company believes that it is appropriate to share with the Fund the $15,000,000 in principal amount of the Notes which the Insurance Company has been offered on the basis of $3,000,000 in principal amount for the Fund and $12,000,000 in principal amount for the Insurance Company. In support of this assertion, Applicants submit the following: The investment policies of the Fund call for the Fund to invest at least 75% of its total assets in one or more of five categories of high grade interest-bearing debt securities and in cash or cash equivalents. In addition, the Fund may invest up to 25% of its assets in certain other types of securities. The Fund now has approximately $36,000,000 in assets which may be invested in the latter types of securities, and the Insurance Company believes it would be inadvisable for too large a portion of those assets to be invested in one restricted debt security. Hence, the Insurance Company believes that it would be advisable for the Fund to acquire $3,000,000 in principal amount of the Notes instead of (for instance) the Fund and the Insurance Company each acquiring one-half of the principal amount of the Notes offered to the Insurance Company. Applicants submit that to make available to the Fund the investment opportunity presented by the proposed Notes is consistent with the provisions, policies, and purposes of the Act.

Section 17(a) of the Act provides, in part, that it is unlawful for any affiliated person of a registered investment company knowingly to sell to such registered investment company any security or other property. Pursuant to

Section 17(b) of the Act, the Commission, upon application, shall grant an exemption from such prohibition if evidence establishes that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. With regard to alternative II, above, Applicants submit that the transfer would technically fall within the provisions of Section 17(a) of the Act.

Applicants submit that (1) the terms of such a transfer, since the consideration paid by the Fund would equal the price paid by the Insurance Company for the Notes, plus accrued interest, will be reasonable and fair and will not involve overreaching on the part of either the Insurance Company or the Fund; (2) the proposed transaction will be consistent with the policy of the Fund as recited in its registration statements; and (3) the proposed transaction will be consistent with the general purposes of the Act.

Notice is further given that any interested person may, not later than March 17, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-5346 Filed 2-28-78; 8:45 am]

[8010-01]

[Release No. 10127; 812-4252]

SCUDDER DEVELOPMENT FUND, ET AL.

Filing of Application for an Order Exempting Proposed Transaction

FEBRUARY 22, 1978.

Notice is hereby gived that Scudder Development Fund ("Scudder"), 345 Park Avenue, New York, N.Y. 10022, an open-end diversified management investment company registered under the Investment Company Act of 1940 ("Act"); and Title Insurance and Trust Co., Trustee for the Individual Retirement Account of Richard D. Colburn ("TITC/IRA/RDC"); Title Insurance and Trust Co., Trustee for the Employees Retirement Plan of Consolidated Electrical Distributors, Inc. ("TITC/ERP/CED"); Richard D. Colburn ("RDC"); Judith N. Colburn ("JNC"); The Employees Retirement Plan of Rolled Alloys, Inc. ("ERP/RA"); and Concord Investment Co. ("Concord") (referred to collectively as "Buyers") c/o Bernard E. Lyons, Esq., 1516 Pontius Avenue, Los Angeles, Calif. 90025, (Scudder and Buyers referred to collectively as "Applicants") filed an application on December 16, 1977 pursuant to section 17(b) of the Act for an order of the Commission exempting from the provisions of section 17(a) of the Act the proposed sale by Scudder to Buyers of 50,000 shares of common stock ("the Shares") of Hughes Supply, Inc. ("Hughes"). TITC/ERP/CED, as an affiliated person of Hughes, which is an affiliated person of Scudder, would otherwise be prohibited under section 17(a) of the Act from knowingly purchasing the shares from Scudder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Scudder was organized on February 5, 1970, under the name of Scudder AM Fund, and on April 24, 1970, its name was changed to Scudder Development Fund. As of November 30, 1977, Scudder had net assets of approximately $21,349,309 and approximately 840 shareholders.

RDC is a resident of Beverly Hills, Calif. and the retired chairman of The Susquehanna Corp., a subsidiary of Studebaker-Worthington Co., of which RDC is a director. Consolidated Electrical Distributors, Inc. ("CED"), a Delaware corporation, is a distributor of electrical supplies and apparatus. The capital stock of CED is owned by RDC and his three children, Keith W. Colburn, Richard W. Colburn and Carol Colburn Hogel ("the Children"). JNC is RDC's wife. Rolled Alloys, Inc. ("RA"), a Delaware corporation, is engaged in the business of steel warehousing and, through subsidiaries, of managing investments. The Capital stock of RA is owned by RDC and the Children. Concord is a Nevada corporation engaged in managing investments. Concord is a wholly owned subsidiary of a wholly owned subsidiary of RA.

Applicants state that Hughes is a Florida corporation engaged in the business of distributing plumbing and electrical supplies and manufacturing. The common stock of Hughes is actively traded in the over-the-counter market.

Scudder holds in its portfolio 93,500 shares of the common stock of Hughes, or approximately 6.97 percent of the outstanding voting stock of Hughes. Each Buyer currently owns the number of shares of Hughes common stock indicated in the following table, and each intends to purchase from Scudder additional shares of Hughes common stock indicated in the following table:

Buyer	Number of shares held	Number of shares purchasing
TITC/IRA/RDC	22,300	900
TITC/ERP/CED	157,000	9,000
RDC		15,000
JNC		5,000
ERP/RA		2,000
Concord	30,000	18,100
	209,300	50,000

Buyers do not concede that any of them other than TITC/ERP/CED is an affiliated person of Hughes within the meaning of section 2(a)(3) of the Act. However, because of the various interrelationships between the purchasers it has been determined to include all of them as Applicants.

The Buyers represent that no one of them nor any individual associated with any of them have any connection with Scudder as a shareholder, employee or otherwise, nor do they have any connection with Scudder, Stevens & Clark, the adviser to Scudder, either through personal relationships, as clients, or through any business relationships whatsoever.

Scudder represents that on Friday, November 25, 1977 a representative of Buyers approached Scudder by telephone to determine whether Scudder had any interest in selling any shares of Hughes. Thereupon, Scudder made inquiries through the NASDAQ System and determined that there were four brokerage houses bidding $14 and asking $14½ per share and four or five additional brokerage houses bidding $13⅞ and asking $14⅜ per share. After reviewing Hughes' current earnings and its basic suitability for Scudder's portfolio, it was determined to offer the Buyers 50,000 shares at a price of $15, thus reducing Scudder's holding to 43,500. This deci-

sion was reached in the light of the judgment that the holding should be reduced at that time. In addition, although $15 per share was less than Scudder's average cost of $16.59 per share, Scudder determined that such commitment was not appropriate at that time because Hughes had not met its expectations and the price had fluctuated, since the original acquisition of the Hughes shares, down to $7 and then back up to $15.

On Monday, November 28, the representative of the Buyers called from California before the opening of the market in New York with an offer of $14¾, which Scudder refused. Applicants state that shortly thereafter the representative of the Buyers consulted further with his clients and agreed to meet Scudder's price. The transaction was confirmed by telegram sent November 30. Scudder represents that it had no particular information about Hughes which influenced its decision to sell this block of 50,000 shares.

Section 17(a) of the Act provides, in part, that it shall be unlawful for any affiliated person of a registered investment company or any affiliated person of such person to knowingly purchase from such registered company, or any company controlled by such registered company, any security or other property.

Scudder owns more than 5 percent of Hughes' capital stock, and therefore, Hughes is an affiliated person of Scudder under section 2(a)(3) of the Act. TITC/ERP/CED owns more than 5 percent of Hughes' capital stock, and, therefore, it is an affiliated person of Hughes under section 2(a)(3) of the Act. TITC/ERP/CED, as an affiliated person of an affiliated person of a registered investment company, acting as principal, is prohibited under section 17(a) of the Act from knowingly purchasing from such registered investment company any security or other property.

Section 17(b) of the Act provides, in part, that the Commission upon application, may exempt a proposed transaction from the provisions of section 17(a) of the Act if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of the investment company and with the general purposes of the Act.

Applicants represent that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned. The price was determined on the basis of arms' length negotiation and represents and increase over the amount the Buyers initially offered. The proposed transaction is consistent with the policy of Scudder, since it represents disposition of a security which has not shown the capital appreciation in the past and does not presently, have, in the judgment of management, the capital appreciation potential for the future which Scudder's investment policy requires it to seek. Applicants represent that the proposed transaction is consistant with the general purposes of the Act because it is in the best interest of investors in Scudder and is designed to obtain an investment result which Scudder does not believe it could be certain of achieving in a different type of transaction.

Notice is further given that any interested person may, not later than March 20, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-5347 Filed 2-28-78; 8:45 am]

[8010-01]

[Release No. 10130; 812-4220]

SENTRY FUND, INC. AND SENTRY EQUITY SERVICES, INC.

Application for an Order of Exemption

FEBRUARY 22, 1978.

Notice is hereby given that Sentry Fund, Inc. (the "Fund"), an open-end diversified management investment company registered under the Investment Company Act of 1940 (the "Act"), and Sentry Equity Services, Inc. ("Equity Services"), the Fund's principal underwriter (collectively, "Applicants"), 1800 North Point Drive, Stevens Point, Wis. 54481, have filed an application on November 14, 1977 and an amendment thereto on January 23, 1978, pursuant to section 6(c) of the Act for an order exempting Applicants from the provisions of section 22(d) of the Act to the extent necessary to permit the purchase of shares of the Fund from the proceeds of certain insurance contracts, as defined herein, issued by Sentry Life Insurance Co. and its subsidiaries, Sentry Life Insurance Co. of New York and Patriot General Life Insurance Co., without a sales charge but subject only to a $20 administrative fee. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations therein, which are summarized below.

All of the issued and outstanding shares of Equity Services are owned by the Sentry Corp., a subsidiary of and holding company for Sentry Insurance a mutual company. The Sentry Corp. organized the Fund in 1969 and owns, either directly or through its subsidiaries, all of the issued and outstanding shares of Sentry Investment Management, Inc., the Fund's investment adviser, and of Sentry Life Insurance Co., Sentry Life Insurance Co. of New York and Patriot General Life Insurance Co.

Sentry Life Insurance Co. is a stock insurance company licensed to write life insurance, annuities, and accident and health insurance in all fifty states except New York, in the District of Columbia, in Hong Kong and in Guam. Sentry Life Insurance Co. of New York is a stock insurance company licensed to write life insurance, annuities, and accident and health insurance in the State of New York. Patriot General Life insurance Co. is a stock insurance company licensed to write life insurance in the state of Massachusetts, Nevada, New Hampshire, and Utah.

Applicants offer shares of the Fund to the public at a price based upon net asset value plus a sales charge that varies with the quantity of securities purchased. The sales charge, expressed as a percentage of the public offering price, ranges from 8 percent on sales of less than $10,000 to 1 percent on sales of $500,000 or more. Applicants propose to sell Fund shares to insureds of Sentry Life Insurance Co., Sentry Life Insurance Co. of New York and Patriot General Life Insurance Co., and/or their beneficiaries without a sales charge but subject only to a $20 administrative fee where payment for such Fund shares is made with proceeds of insurance contracts issued by said companies. Applicants

have defined "proceeds of insurance contracts" to mean: death benefits under life policies, the maturity value of endowment contracts, the cash (surrender) value of fixed-dollar like insurance and annuity contracts, and lump sum cash options available to beneficiaries.

Section 22(d) of the Act provides, in part, that no registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter if such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus.

Applicants state that elimination of the sales charge for purchases made with insurance proceeds would recognize that the payments giving rise to the insurance proceeds would have been previously subjected to sales charges and would avoid cumulation of sales charges. Applicants further contend that such elimination is appropriate since no advertising or other sales effort is required where Fund shares are purchased with insurance proceeds and that the opportunity to purchase Fund shares at a reduced charge will afford insureds and their beneficiaries additional flexibility with respect to their insurance proceeds.

Applicants state that the proposed $20 administrative fee is intended to pay for review and underwriting of the insured's (beneficiary's) application, coding, establishing a Fund account, preparation of a deposit remittance, production and mailing of a confirmation and setting up of a file folder and represents Equity Services' costs or approximate costs involved in such transactions. Applicants further state that no part of the proposed $20 fee will be used to compensate any salesman nor may any part be properly deemed a sales load, that if the proposed $20 fee should result in a profit, which is not anticipated, no part thereof will be used as a sales load or to compensate any salesman and that if in the future Applicants anticipate that the proposed $20 fee will result in a profit, downward adjustment will be made so that the fee does not exceed anticipated cost or approximate cost. Applicants state that in no event will the insured or beneficiary purchasing the Fund shares incur a charge exceeding the normal sales load and that the vast majority of individuals who purchase Fund shares with their insurance proceeds will achieve substantial savings.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than March 20, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-5348 Filed 2-28-78; 8:45 am]

[8010-01]

[Release No. 10123; 812-4205]

VANCE, SANDERS MUNICIPAL BOND FUND, LTD. AND VANCE, SANDERS & CO., INC.

Filing of Application for Order of Exemption

FEBRUARY 17, 1978.

Notice is hereby given that Vance, Sanders Municipal Bond Fund, Ltd. (a California Limited Partnership) ("Fund"), registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified management investment company, and Vance, Sanders & C., Inc. ("Vance Sanders"; referred to collectively with the Fund as "Applicants"), Advisor General Partner and investment adviser of, and principal underwriter for, the Fund, One Beacon Street, Boston, Mass. 02108, filed an application on October 13, 1977, and amendments thereto on January 4, 1978, and February 14, 1978, requesting an order of the Commission pursuant to section 6(c) of the Act exempting the Fund and its general partners from the provisions of (1) section 2(a)(19) of the Act to the extent that the Fund's general partners would otherwise be deemed to be "interested persons" of the Fund or its Advisor General Partner solely because they are partners in the Fund, and (2) section 15(c) of the Act so that the Director General Partners will not be deemed to be parties to the Fund's investment advisory contract solely by reason of their being parties to the Fund's partnership agreement. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the Fund was organized as a limited partnership under the Uniform Limited Partnership Act of California and propose to operate as an open-end investment company with the objective of providing investors as high a level of current income exempt from federal income taxes as is consistent with the preservation of capital. They further state that the Fund will seek to achieve this objective by investing in a diversified portfolio of obligations, the interest from which is exempt from federal income tax. According to the application, rulings have been issued by the Internal Revenue Service stating that the Fund will be taxed as a partnership and not as an association taxable as a corporation, and that the income of the Fund exempt from federal income taxes would retain its tax-exempt character when properly allocable to the partners. Although the Internal Revenue Service has not ruled upon whether the particular allocations proposed by Applicants will be given effect for federal income tax purposes, Applicants state that they have been advised by cousel that the allocation of income they propose is proper.

Applicants further state that: (1) the general partners of the Fund will consist of Director General Partners and an Advisor General Partner; (2) only individuals may serve as Director General Partners; (3) the Fund will be managed solely by the Director General Partners except for those specific activities of the Fund for which responsibility is given to the Advisor General Partner; and (4) the Director General Partners will perform the same functions as directors of incorpo-

rated investment companies. Applicants state that the Advisor General Partner is excluded from participation in the management of the Fund; however, the Advisor General Partner is charged with certain responsibilities, including managing the investment of Fund assets and administering its affairs subject to the supervision of the Director General Partners. Applicants further state that in return for the Advisor General Partner assuming the responsibilities assigned to it, the partnership agreement provides that such partner will be allocated 6½ percent of the daily gross income of the Fund (excluding gains or losses), but in no event shall such amount exceed, on an annual basis, 0.3 of 1 percent of the Fund's average net assets.

Included as exhibits to the application are opinions of counsel that: (1) the Fund is duly organized and validly existing as a limited partnership under the laws of the State of California, and (2) the division of managerial functions among the general partners in the manner proposed is lawful.

According to the application, (1) the Director General Partners act only by majority vote and are subject to election and removal by vote of the partners; (2) in the event no Director General Partner remains, it is the responsibility of the Advisor General Partner to promptly call a meeting of the limited partners ("Limited Partners"), to be held within 120 days of the date the last Director General Partner ceased to act in such capacity, for the purpose of determining whether to elect to continue the business of the Fund and, if the business is to be continued, the election of Director General Partners; and (3) for the period of time during which no Director General Partner remains, the Advisor General Partner is permitted to engage in the management, conduct and operation of the business of the Fund to the same extent as a Director General Partner. Applicants state that the Advisor General Partner shall be subject to election and removal by vote of the partners and, in addition, may be removed as the Advisor General Partner upon 60 days' written notice by vote of a majority of the Director General Partners or by vote of the partners.

According to the application, (1) the Fund's Limited Partners have no rights to control the Fund's business, but may exercise certain rights and powers of a Limited Partner under the partnership agreement, including voting rights, and (2) the partnership agreement authorizes Limited Partners to exercise voting rights on certain matters, including the right to elect or remove general partners. Applicants state that it is the opinion of California counsel that the existence or exercise of these voting rights does not subject the Limited Partners to liability as general partners under the Uniform Limited Partnership Act of California. However, Applicants further state that it is possible that because of such voting rights the Limited Partners might be found to be subject to liability as general partners by the courts of another state. In this regard, the Applicants state (1) that, if a Limited Partner is sued to satisfy an obligation of the Fund, the Fund will, upon notice of such suit by the Limited Partner, either satisfy such obligation or, if it believes such suit is without merit, undertake the defense of such suit, and (2) that the Fund intends to include in all material contracts a provision limiting the claims of creditors to Fund assets. Applicants have submitted as an exhibit to the application an opinion of counsel stating that if a Limited Partner is held to be liable as a general partner, has satisfied liabilities of the Fund in excess of his required capital contribution, and if the assets and insurance of the Fund are insufficient to reimburse the Limited Partner, the partnership agreement provides a basis upon which the Limited Partner would have recourse against the general partners.

Applicants state that the entire interest of the partners will be divided into Shares of Partnership Interest ("Shares") which will be offered to investors, and that, upon the sale of a Share to a purchaser who is not a Limited Partner, and upon receipt of a signed partnership authorization, including a power of attorney required of all Limited Partners, the purchaser will become a Limited Partner upon the filing of an amendment to the partnership agreement. According to the application, the Director General Partners agree to process such amendments weekly, and daily when necessary. Applicants further state that (1) the remainder of the Fund's income after the allocation of income to the Advisor General Partner, referred to above, as well as other items of gain, loss, deductions and credits, will be allocated equally among the outstanding Shares of the Fund; (2) all Shares will have equal rights and one vote each on all matters to be voted upon by partners; and (3) a Limited Partner can assign his Shares, in whole or part, provided the assignee agrees to become a substituted Limited Partner, the Director General Partners consent to such assignment and substitution, and the assignee executes the necessary documents to become a substituted Limited Partner.

According to the application (1) as a condition of the granting of the rulings noted above, the Internal Revenue Service required that at all times the general partners must have in the aggregate a one percent interest in all Fund items of income, gains and losses; (2) the general partners have met this condition by purchasing in the aggregate one percent of the outstanding Shares of the Fund; and (3) Vance Sanders undertakes that at all times while serving as Advisor General Partner it will own one percent of the Fund's outstanding Shares and will not withdraw as Advisor General Partner except on two year's notice. Vance Sanders also undertakes that it will stand for election for Advisor General Partner at each election so long as its duties and obligations as Advisor General Partner have not been terminated, and that in the event that the Fund terminates such obligations and duties, Vance Sanders will remain as a general partner and continue to own one percent of the outstanding Shares for one year or until a successsor general partner is appointed, whichever is earlier. The Fund undertakes that any successor Advisor General Partner will agree to the same undertakings as Vance Sanders. Applicants agree that any exemptive order issued herein may be conditioned upon the continued effectiveness of such undertakings.

On October 4, 1976, the Tax Reform Act of 1976 amended Subchapter M of the Internal Revenue Code, effective for taxable years beginning after December 31, 1976, to enable investment companies in corporate form to pass through tax-exempt income to their shareholders. The Fund asserts, however, that the following desirable consequences can be achieved in partnership form, but not in corporate form:

(1) Although, as noted above, the Internal Revenue Service has not ruled that the allocation of income Applicants propose will be given effect for federal income tax purposes, the Fund believes that the income received by Vance Sanders is non-taxable if tax-exempt to the partnership, enabling the advisory fee to be substantially lower than fees currently being paid by almost all corporate municipal bond funds;

(2) As a partnership the Fund is in a more flexible position because it would not have to comply with the percentage limitations on investments and income contained in Subchapter M of the Internal Revenue Code, as would a corporate municipal bond fund;

(3) If any portion of the partnership's income is tax-exempt in a state if received directly, it may be tax-exempt to the partner because, normally, under state law a partner is taxed on his allocated share of partnership income as though received directly; and

(4) A partnership normally is not subject to state taxes; the Fund expects to receive rulings from (a) the Department of Revenue of the State of California to the effect that the Fund is not subject to any income tax in the State of California, and (b) the

Massachusetts Department of Corporations and Taxation to the effect that neither the Fund nor non-resident holders of Shares, by reason of their being holders of Shares, will be subject to Massachusetts income tax.

Section 10(a) of the Act provides that no registered investment company shall have a board of directors more than 60 percent of the members of which are persons who are "interested persons" of such registered company. Section 2(a)(12) of the Act defines "director" to include any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

Section 15(c) of the Act provides, inter alia, that it shall be unlawful for any registered investment company having a board of directors to enter into, renew, or perform any contract or agreement whereby a person undertakes to serve or act as investment adviser of such company, unless the terms of such contract or agreement and any renewal thereof have been approved by the vote of a majority of directors who are not parties to such contract or agreement or interested persons of any such party.

Section 2(a)(19)(A) of the Act provides, in part, that an "interested person" of another person, when the other person is an investment company, means (1) any affiliated person of such investment company, and (2) any interested person of any investment adviser or principal underwriter for such company. Section 2(a)(19)(B) of the Act provides, in part, that an "interested person" of another person, when the other person is an investment adviser or principal underwriter for any investment company, means any affiliated person of such investment adviser or principal underwriter. Section 2(a)(3)(D) of the Act provides, in part, that an "affiliated person" of another person means any partner or co-partner of such person.

Applicants submit that the relationship of the Director General Partners to the Fund is essentially identical to the relationship of directors to a corporate investment company. They state that, nevertheless, the provisions of section 2(a)(3) of the Act would make all Director General Partners affiliated persons of the Advisor General Partner, with the result that the Director General Partners would be deemed interested persons of the Fund and its Advisor General Partner under section 2(a)(19) of the Act.

Applicants, to permit compliance with sections 10(a) and 15(c) of the Act, have requested that the Fund and its general partners be exempted from the provisions of section 2(a)(19) to the extent that the general partners would otherwise be interested persons of the Fund or its Advisor General Partner solely because they are general partners of the Fund, a limited partnership in which the Fund's investment adviser and principal underwriter, Vance Sanders, is also a general partner. Applicants assert that since section 2(a)(19) excludes from the definition of interested person of an investment company those individuals who would be interested persons solely because they are directors or owners of securities of an investment company, and since the Advisor General Partner is excluded from participation in the management of the Fund, it is consistent with the purposes fairly intended by the policy and provisions of the Act to grant the requested exemption from section 2(a)(19).

Applicants state that since the Director General Partners who fulfill the function of non-interested directors of necessity have signed the partnership agreement and the partnership agreement provides for compensation to Vance Sanders for managing the investment and reinvestment of Fund assets, it could be contended that the Director General Partners are parties to the advisory contract or agreement. Applicants have requested an exemption from the provisions of section 15(c) of the Act so that the Director General Partners will not be deemed to be parties to the advisory contract solely by reason of their being parties to the partnership agreement. Applicants state that all of the provisions required to be included in an advisory contract by section 15 of the Act are included in the partnership agreement, which is a written agreement, and that the partnership agreement will be submitted to the partners (i.e., shareholders) and Director General Partners for approval.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In addition to the undertakings summarized above, Vance Sanders undertakes that it will not request, and the Fund undertakes that it will not grant, for a period of three years, an increase in either the percentage of income allocated to Vance Sanders, or in the limitation on such allocation of 0.3 percent of average net assets on an annual basis. The Applicants also undertake that if the tax treatment to Vance Sanders with respect to either the income received, or expenses incurred, by Vance Sanders while acting as Advisor General Partner is adversely affected and the Fund is willing, because of such change, to recommend to shareholders an increase in the income to be allocated to Vance Sanders so that there is no longer any significant advantage to the partnership form, Vance Sanders will recommend to the Fund, and the Fund will recommend to its shareholders, that the form of the Fund's organization be changed from a partnership to a corporation. Vance Sanders also undertakes that if the tax treatment of the income received or expenses incurred while acting as Advisor General Partner is not adversely affected, Vance Sanders will not request or accept an increase in such income unless, after such increase, the income allocated to it for acting as Advisor General Partner is significantly below its fees received for acting as investment adviser to other investment companies.

The Fund undertakes that, prior to a public offering of Shares, it will be added as one of the named assureds in an errors and omissions policy, up to a maximum amount of $5 million (with a $100,000 deductible for any one claim) and will be a named assured in a brokers' indemnity bond in an aggregate amount of $10 million. The Fund undertakes that it will be covered by such insurance and that it will take no action to cancel such policies or, if such policies are cancelled by the insurance companies, it will obtain comparable insurance.

Applicants agree that any exemptive order granted may be conditioned upon the continued effectiveness of the above-described undertakings. They submit that the granting of the requested exemptions is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than March 14, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course fol-

lowing said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-5349 Filed 2-28-78; 8:45 am]

[4710-02]

DEPARTMENT OF STATE

Agency for International Development

PROVISION OF PESTICIDES TO LIBERIA, AFRICA

Intent To Waive Certain Requirements

AGENCY: Agency for International Development, State.

ACTION: Notice of Intent to Waive Certain Requirements to allow procurement of Pesticides to Control Cocoa and Coffee Pests and Diseases in Liberia.

SUMMARY: The Agency for International Development intends to waive certain requirements for provision of pesticides as set forth in Interim Pesticide Procedures, the "Interim Regulations", published in the FEDERAL REGISTER on January 7, 1976 (41 FR 1297). This waiver will be made pursuant to Section (a) of the regulations.

DATES: Comments on this proposed action must be received within twenty (20) days after publication in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

Dr. Frederick Whittemore, Room 413F, Rosslyn Plaza, Arlington, Va. 20523, 703-235-1497. Mail address, Office of Agriculture, AID, Department of State, Washington, D.C. 20523.

SUPPLEMENTARY INFORMATION: The following table sets forth the pesticides, the crops on which they will be used, and the target pest or disease.

Pesticide	Crop	Pest/disease
Cuprous oxide	Cocoa	Black pod disease.
Do	Coffee	Coffee berry disease.
Lindane	Cocoa	Cocoa mirids.

BACKGROUND

The Agency for International Development (A.I.D.) negotiated a loan agreement with the Liberian government in November, 1975. The purpose of the $5 million to be loaned over a 5 year period was to increase rice, coffee, and cocoa production of small farmers in Lofa County. Experience in Liberia and elsewhere in the coffee and cocoa growing areas of West Africa indicates that unless black pod and mirids on cocoa, and coffee berry disease on coffee, are controlled with such insecticides and fungicides as are being proposed in this project, productivity remains marginal. The use of such pesticides is essential for the increased production of coffee and cocoa by small farmers, which is the objective of the loan agreement.

A.I.D. INTERIM PESTICIDE PROCEDURES

The Interim Pesticide Procedures, which clearly apply to the proposed procurement, provide that A.I.D. will not finance pesticides that have not been registered by the Environmental Protection Agency (EPA) for the specific uses for which procurement is intended. However, A.I.D. may finance the procurement of unregistered pesticides if they are to be used on crops and associated pests not grown or found in the United States and if the determination is made by the Administrator of A.I.D. that the benefits to be derived from their use outweigh potential adverse effects and no preferable alternatives are available.

The administrator has tentatively determined that the benefits of the procurement and use of these pesticides outweigh the potential adverse effects and that no preferable alternatives are available.

BASIS FOR DETERMINATION

Cuprous Oxide (Perenox). This fungicide is registered for general use by EPA. The environmental impact of its use in the United States is considered to be minimal by EPA. It is of a very low order of acute toxicity to humans and is extensively used on a variety of food crops, including fresh fruits and vegetables, many of which are frequently consumed without further processing. Although the climatic and sociological conditions under which these pesticides will be used in Liberia differ greatly from U.S. conditions, cuprous oxide has been widely used, with no known instances of any related toxicological or environmental problems, throughout coffee and cocoa growing areas of West Africa for the control of coffee and cocoa diseases.

Lindane (Gamma BHC). On February 17, 1977, subsequent to the proposed use of lindane in the relevant project paper, EPA published a FEDERAL REGISTER Notice (42 FR 9816-23) of a Rebuttable Presumption Against Registration and Continued Registration of Pesticide Products Containing Lindane on the basis of laboratory evidence indicating that lindane caused tumors in laboratory animals and interferes with their growth, maturation, and reproductive capacity. Evidence is also available that lindane presents an unreasonable hazard to aquatic organisms. However, EPA does not consider the above evidence to be sufficient to warrant issuance of a Notice of Intent to cancel the registration of lindane products at this time.

Aware of this information, A.I.D. considered two substitutes proposed by the Ghana Cocoa Research Institute, propoxur and dioxacarb. However, these two carbamates present an acute toxic hazard to human users, since they inhibit the enzyme cholinesterase and can result in intoxication, caused by over exposure, to workers. The acute human toxicological hazards associated with the use of lindane are relatively slight when compared with propoxur and dioxacarb.

The proposed use of lindane on growing cocoa in Liberia does not involve direct application to the aquatic environment. Farmers will be briefed on this hazard, which is associated with pesticide drift. Additionally, lindane and benzene hexachloride (of which lindane is the gamma isomer) have been used extensively in Africa for the past twenty-five years, for the protection of stored grains and other purposes, as well as on cocoa. Since the crop in the project area is estimated to be less than 0.3 percent of the total African crop, the incremental risk associated with the use of lindane on this extremely small proportion of the total crop, much of which is and has been protected by lindane or benzene hexachloride, is considered to be insignificant when compared with the cumulative exposure which has already been, and will continue to be, experienced by persons using this material in Africa and persons consuming toxicologically insignificant amounts of lindane residues in cocoa and chocolate products throughout the world.

Project measures are planned to minimize hazards related to pesticide handling which will result in much better monitoring and controlling of chemical use under this project than obtains elsewhere in Liberia. These measures include:

(1) Regulation of pesticide distribution, storage, and use by officials;

(2) Conducting regular training programs for extension workers and farmers on appropriate application procedures and the use of safety equipment;

(3) Application of field pesticides directly by project officials initially and until farmers have sufficient knowledge and experience to assume this responsibility.

For each of the pesticides to be used in this project, there is no preferable alternative available. Experience throughout the coffee and cocoa growing areas of West Africa indicates that unless black pod and mirids on cocoa

and coffee berry disease are controlled with such pesticides, productivity remains marginal. Their use is therefore essential for the production of economically profitable crops. Use of these pesticides can thus be expected to increase appreciably the income of small farmers producing coffee and cocoa in Liberia.

The incremental added risks associated with the use of these pesticides in this project are considered to be negligible and to be outweighed by the benefits of using them on coffee and cocoa.

The EPA Registration Division of EPA has been consulted and its concurrence in the intended course of action has been obtained.

This publication constitutes notice of the impending final approval of this determination by the Administrator, A.I.D.

Dated: February 13, 1978.

GOLER T. BUTCHER,
Assistant Administrator for Africa.

[FR Doc. 78-5335 Filed 2-28-78; 8:45 am]

[4710-02]

[Delegation of Authority No. 127]

MISSION DIRECTOR AND DEPUTY MISSION DIRECTOR

United States Agency for International Development/Egypt

Pursuant to the authority delegated to me by AID Delegation of Authority No. 23, dated December 28, 1962, as amended, I hereby delegate the following functions to the Mission Director and Deputy Mission Director, USAID/Egypt, with respect to projects proposed to be conducted in Egypt under section 204 of Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480):

(1) Determining the agencies, including intergovernmental organizations, through which and the manner, terms, and conditions upon which, transfers of Egyptian pounds obtained with funds authorized under section 204 shall be made in order to meet costs designed to assure that commodities made available under Title II are used to carry out more effectively the purpose for which such commodities are made available, or to promote community and other self-help activities designed to alleviate the causes of the need for such assistance, (except for the personnel and administrative costs of cooperating sponsors, distributing agencies, and recipient agencies, and the costs of construction or maintenance of any church-owned or operated edifice or any other edifices to be used for sectarian purposes); and (2) determining that such funds are supplemental to, and not in substitution for, funds normally available for such purposes from other non-United States sources.

The exercise of such authority shall be in accordance with section 204 of Pub. L. 480 and AID Handbook Nine, and is subject to the following limitations:

(a) No individual project shall be approved which would obligate U.S.-owned local currency exceeding the equivalent of U.S. $100,000; and the total amount of all projects approved in any fiscal year shall not exceed the local currency equivalent of U.S. $1,000,000.

(b) No project shall be approved which is not recommended and sponsored by qualified and experienced cooperating sponsors operating Title II food assistance programs in Egypt.

(c) Use of this authority in each fiscal year is subject to the availability of funds and prior approval by AID/Washington and the Interagency Staff Committee of the total amount of local currencies proposed for utilization in that fiscal year.

This Delegation of Authority may not be redelegated.

This Delegation of Authority is effective immediately.

Dated: February 3, 1978.

JOSEPH C. WHEELER,
Assistant Administrator, Bureau for Near East.

[FR Doc. 78-5336 Filed 2-28-78; 8:45 am]

[4710-02]

[Delegation of Authority No. 128]

MISSION DIRECTOR AND DEPUTY MISSION DIRECTOR

United States Agency for International Development/Egypt

Pursuant to the authority delegated to me by A.I.D. Delegation of Authority No. 23, dated December 28, 1962, as amended, I hereby delegate to the Mission Director and Deputy Mission Director, USAID/Egypt, the function, pursuant to section 204 of Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), of signing local currency project agreements or other appropriate documents with cooperating sponsors to effect the obligation and expenditure of Egyptian pounds accruing under Title I of Pub. L. 480 and purchased from the U.S. Treasury under the authority of section 204 of Pub. L. 480.

The exercise of such authority shall be in accordance with section 204 of Pub. L. 480 and AID Handbook Nine, and is subject to the limitations that:

(1) No local currency project agreement shall be signed which would obligate U.S.-owned local currency exceeding the equivalent of U.S. $100,000; and the total amount of all local currency project agreements signed in any fiscal year shall not exceed the local currency equivalent of U.S. $1,000,000.

(2) Use of this authority in each fiscal year is subject to the availability of funds and prior approval by AID/Washington and the Interagency Staff Committee of the total amount of local currencies proposed for utilization in that fiscal year.

This Delegation of Authority may not be redelegated.

This Delegation of Authority is effective immediately.

Dated: January 26, 1978.

KATHLEEN S. BITTERMANN,
Coordinator, Office of Food for Peace.

[FR Doc. 78-5337 Filed 2-28-78; 8:45 am]

[4910-57]

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

SPECIAL GUIDELINES FOR RAIL TRANSIT

Equipment Procurements

On December 15, 1976, the Department of Transportation, Urban Mass Transportation Administration (UMTA) published in the FEDERAL REGISTER a document proposing guidelines for certain contract terms and conditions to be used for the procurement of rail transit equipment purchased with UMTA capital grant funds (41 FR 54825).

Pursuant to the notice accompanying this document, UMTA held a public hearing on January 12, 1977, to receive comments on the proposed guidelines. Interested persons were given until February 11, 1977, to submit written comments. The notice also provided that after the meeting was held and all the information submitted was reviewed, UMTA would prepare a final version of these guidelines to be promulgated through appropriate channels.

UMTA has given careful consideration to all comments received with respect to the proposed guidelines, and has revised and consolidated several of the proposed guidelines to respond to comments received or to clarify their intended meaning. Therefore, UMTA now issues for publication as a supplement to its third-party contract requirements set forth in the External Operating Manual an addendum consisting of the following sixteen guidelines specifically applicable to rail transit equipment procurements: Authority of the Engineer or Other Agent of the Buyer, Changes, Title,

Risk of Loss, Acceptance, Indemnification, Liquidated Damages, Termination for Default, Excusable Delays, Stop Work Orders, Changes in Laws or Regulations, Approval of Subcontractors, Inspections and Tests, Disputes and Claims, Buyer's Pre-Bid Appeal Procedure, and Exemptions from Guidelines.

Because these guidelines relate to grants, they may be made effective in fewer than 30 days following notice of their issuance by UMTA.

Interested persons may obtain copies of these "Special Guidelines for Rail Transit Equipment Procurements" and background information concerning this matter by writing to the Director, Office of Public Affairs, Urban Mass Transportation Administration, 400 7th Street SW., Room 9330, Washington, D.C. 20590

Issued in Washington, D.C., February 23, 1978.

RICHARD S. PAGE,
Urban Mass Transportation Administrator.

[FR Doc. 78-5386 Filed 2-28-78; 8:45 am]

[4810-35]

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1977 Rev., Supp. No. 11]

SURETY COMPANIES ACCEPTABLE ON FEDERAL BONDS

A certificate of authority as an acceptable surety on Federal bonds is hereby issued by the Secretary of the Treasury to the following company under Sections 6 to 13 of Title 6 of the United States Code. An underwriting limitation of $40,000 has been established for the company.

Name of Company, Business Address, and State in Which Incorporated

Fritz Insurance Company

2150 Landmeier Road

Elk Grove Village, Illinois 60007

New Mexico

Certificates of authority expire on June 30 each year, unless sooner revoked, and new certificates are issued on July 1 so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: February 23, 1978.

D. A. PAGLIAI,
Commissioner, Bureau of Governmental Financial Operations.

[FR Doc. 78-5316 Filed 2-28-78; 8:45 am]

[4830-01]

Internal Revenue Service

COMMISSIONER'S ADVISORY GROUP

Open Meeting

There will be a meeting of the Commissioner's Advisory Group on March 14 and 15, 1978, in room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue NW., Washington, D.C. The meeting will begin at 10 a.m. on March 14 and 9 a.m. on March 15. The agenda will include the following topics:

TUESDAY, MARCH 14, 1978

Review of IRS Audit Efficiency
Availability and Use of Technical Advice by Revenue Agents
Impact of Code Section 6110 on the Private Rulings Procedure and on the Publication of Revenue Rulings.
Feasibility of Pilot Projects to Provide No-Fee and Low-Fee Legal Services to Taxpayers in Audit, Appeals and Collection
Effectiveness of Relationships Between IRS and Professional, Trade, and Taxpayer Groups

WEDNESDAY, MARCH 15, 1978

Employment Tax Timing Problems of Exempt Organizations Dependent Primarily on Federal Grants
IRS Reorganization
IRS Alternative to TAS
Partnership Level Audit Proposal

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people. After the Committee members finish discussing the items on the agenda, there may be time for statements by non-members. If you want to make a statement at the meeting, or if you would the Committee to consider a written statement, please call or write to Lauralee A. Matthews, Assistant to the Commissioner, 1111 Constitution Avenue NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Lauralee A. Matthews, Assistant to the Commissioner, 202-566-4390 (not toll free).

JEROME KURTZ,
Commissioner.

FEBRUARY 23, 1978.

[FR Doc. 78-5283 Filed 2-28-78; 8:45 am]

[4810-22]

Office of the Secretary

CERTAIN NUTS, BOLTS, AND SCREWS

Initiation of Investigation Under Section 232 of the Trade Expansion Act of 1962

AGENCY: United States Treasury Department.

ACTION: Initiation of Section 232 Investigation.

SUMMARY: This notice is to advise the public that an investigation is being conducted under section 232 of the Trade Expansion Act to determine the effects on the national security of imports of nuts, bolts, and large screws. Interested parties are invited to submit written data, views or arguments to the General Counsel of the Treasury concerning this question by March 31, 1978.

EFFECTIVE DATE: March 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard B. Self, Director, Office of Tariff Affairs, Office of the General Counsel, Office of the Secretary, Department of the Treasury, 15th and Pennsylvania Avenue NW., Washington, D.C. 20220, 202-566-8585.

SUPPLEMENTARY INFORMATION: In a letter dated February 10, 1978, the President directed the Secretary of the Treasury to initiate an expedited national security investigation, under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) pertaining to U.S. imports of iron or steel lag screws and bolts, bolts (except mine-roof bolts), nuts and large screws provided for in TSUS items 646.49, 646.54, 646.56, and 646.63. (A copy of the letter is appended to this notice.) Accordingly, such an investigation is being undertaken pursuant to section 9.2(a) of the Treasury Regulations (31 CFR 9.2(a)).

Interested parties are invited to submit relevant data, views, or arguments with respect to this question to the General Counsel of the Treasury by March 31, 1978.

Within 90 days following the publication of this Notice, a notice may be issued announcing the time and place of a public hearing designed to afford interested parties the opportunity to present oral or written views on specific questions on which Treasury thinks additional guidance from public comment may be helpful. The public hearing will take place within 30 days of publication of that Notice.

A recommendation to the President by the Secretary of the Treasury as to the appropriateness of import relief under section 232 of the Trade Expan-

sion Act of 1962 is expected to be made no later than August 28, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

FEBRUARY 24, 1978.

APPENDIX

THE WHITE HOUSE,
Washington, February 10, 1978.

HON. W. MICHAEL BLUMENTHAL,
Secretary of the Treasury,
Washington, D.C.

DEAR MR. SECRETARY: Pursuant to section 202(b) of the Trade Act of 1974, I have determined that provision of import relief on U.S. imports of iron or steel lag screws or bolts, bolts (except mine-roof bolts) and bolts and their nuts in the same shipment, nuts, and screws having shanks or threads over 0.24 inch in diameter, provided for in items 646.49, 646.54, 646.56, and 646.63 of the Tariff Schedules of the United States (TSUS) would not be in the national economic interest.

In conjunction with my decision not to provide import relief to the domestic bolt, nut, and large screw industry, I have determined that, in light of a recent Federal Preparedness Agency (FPA) staff study which indicates that domestic fastener production capability is not adequate to satisfy wartime metal fastener requirements, further investigation of U.S. national security interests as they relate to bolts, nuts, and large screws is warranted. Accordingly, I hereby direct that you undertake an expedited national security investigation under section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) pertaining to U.S. imports of iron or steel lag screws and bolts, bolts (except mine-roof bolts), nuts, and large screws provided for in TSUS items 646.49, 646.54, 646.56, and 646.63.

Sincerely,

JIMMY CARTER.

[FR Doc. 78-5383 Filed 2-28-78; 8:45 am]

[4810-40]

Office of The Secretary

[Supplement to Department Circular, Public Debt Series—No. 6-78]

TREASURY NOTES OF SERIES G-1982

Interest Rate Increase

FEBRUARY 23, 1978.

The Secretary of the Treasury announced on February 22, 1978, that the interest rate on the notes described in Department Circular—Public Debt Series—No. 6-78, dated February 16, 1978, will be 7⅞ percent per annum. Accordingly, the notes are hereby redesignated 7⅞ percent Treasury Notes of Series G-1982. Interest on the notes will be payable at the rate of 7⅞ percent per annum.

PAUL H. TAYLOR,
Acting Fiscal Assistant Secretary.

[FR Doc. 78-5310 Filed 2-28-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 599]

ASSIGNMENT OF HEARINGS

FEBRUARY 24, 1978.

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 36781, Rate Restructuring, December 1977, R.M.M.T.B., now assigned February 27, 1978, at DC, is postponed indefinitely.

Section 5b Appl. No. 1, Alaska Rail Water Association Agreement, now assigned March 7, 1978, at DC, is canceled and reassigned to April 3, 1978, at Seattle, WA, in a hearing room to be later designated.

MC 134970 (Sub-No. 16), Unzicker Trucking, Inc., is now assigned March 14, 1978, at Chicago, IL, and will be held at room 280, E. M. Dirksen Building, 219 South Dearborn Street.

MC 134022 (Sub-No. 25), Richard A. Zima, d.b.a. Zipco is now assigned March 15, 1978, at room 280, E. M. Dirksen Building, 219 South Dearborn Street.

MC 134022 (Sub-No. 26), Richard A. Zima, d.b.a. Zipco is now assigned March 15, 1978, at room 280, E. M. Dirksen Building, 219 South Dearborn Street.

MC 134022 (Sub-No. 29), Richard A. Zima, d.b.a. Zipco is now assigned March 15, 1978, at Chicago, IL, and will be held at room 280, E. M. Dirksen Building, 219 South Dearborn Street.

MC 80289 (Sub-No. 13), Red Line Furniture Carriers, Inc., now being assigned May 8, 1978 (1 week), at New York, NY, in a hearing room to be later designated.

MC-F-13067, Roadway Express, Inc.—Control and Merger—Western Gillette, Inc., MC-F-13156, Arkansas-Best Freight System, Inc.—Purchase (Portion)—Western Gillette, Inc., MC-F-13157, Campbell Sixty-Six Express, Inc.—Purchase (Portion)—Western Gillette, Inc., MC-F-13158, The Chief Freight Lines Co.—Purchase (Portion)—Western Gillette, Inc., F.D. 28591, The Chief Freight Lines, Co., MC-F-13159, Churchill Truck Lines, Inc.—Purchase (Portion)—Western Gillette, Inc., MC-F-13160, Gordons Transport, Inc.—Purchase (Portion)—Western Gillette, Inc., and MC-F-13161, Graves Truck Line, Inc.—Purchase (Portion)—Western Gillette, Inc., now being assigned for continued hearing on April 11, 1978 (4 days), at Dallas, TX, in a hearing room to be later designated.

MC 96992 (Sub-No. 4), Highway Pipeline Trucking Co. and MC 115841 (Sub-No. 538), Colonial Refrigerated Transportation, Inc., now being assigned April 17, 1978 (1 week), at Dallas, TX, in a hearing room to be later designated.

MC 125433 (Sub-No. 123), F-B Truck Line Co., is now assigned for hearing May 2, 1978 (1 day), at San Francisco, CA, at a hearing room to be later designated.

MC 30837 (Sub-No. 478), Kenosha Auto Transport Corp., is now assigned for hearing May 3, 1978 (3 days), at San Francisco, CA, at a hearing room to be later designated.

MC 109780 (Sub-No. 74), Continental Trailways, Inc., is now assigned for hearing May 8, 1978 (2 weeks), at San Francisco, CA, at a hearing room to be later designated.

AB 43 (Sub-No. 42), Illinois Central Gulf Railroad Co. Abandonment in Green, Monroe, Brown, Johnson, Morgan, and Marion Counties, IN, is now assigned for hearing March 13, 1978, at Indianapolis, IN, and will be held at room 264, New Federal Building, 575 North Penn and March 14-17, hearing will be held at room 402, Federal Building and U.S. Courthouse, 46 East Ohio Street.

MC 119792 (Sub-No. 66), Chicago Southern Transportation Co., is now assigned for hearing April 25, 1978 (1 day), at Tampa, FL, at a hearing room to be later designated.

MC 113388 (Sub-No. 121), Lester C. Newton Trucking Co., Inc., is now assigned for hearing April 26, 1978 (3 days), at Tampa, FL, at a hearing room to be later designated.

MC 56679 (Sub-No. 94), Brown Transport Corp., is now assigned for hearing May 5, 1978 (1 day), at Miami, FL, at a hearing room to be later designated.

MC 140587 (Sub-No. 4), Cecil Claxton Trucking, now assigned April 4, 1978, at DC, is canceled.

MC 9913, American Can & Storage, Inc., Investigation and Revocation of Certificates, is now assigned for hearing May 4, 1978 (1 day), at Miami, FL, at a hearing room to be later designated.

AB 55 (Sub-No. 13), Seaboard Coast Line Railroad Co. Abandonment Between Arcadia and Port Boca Grande in DeSoto, Charlotte, and Lee Counties, FL, is now assigned for hearing May 1, 1978 (3 days), at Ft. Myers, FL, at a hearing room to be later designated.

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

[FR Doc. 78-5392 Filed 2-28-78; 8:45 am]

[7035-01]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY—ELIMINATION OF GATEWAY LETTER NOTICES

FEBRUARY 15, 1978.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may

be filed with the Interstate Commerce Commission within 10 days from the date of this publication. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier*, by motor vehicles, over irregular routes.

No. MC 61825 (Sub-No. E1183) (Correction), filed May 13, 1974, published in the FEDERAL REGISTER issue of January 20, 1978, and partially republished, as corrected, this issue. Applicant: ROY STONE TRANSFER CORP., P.O. Box 385, Collinsville, VA 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth Street NW., Washington, DC 20036. *Furniture parts* (except commodities in bulk), from points in CT, DE, DC, ME, MD, MA, NH, NJ, RI, those points in VT on and east of a line beginning at the United States-Canadian International Boundary line, and extending along VT Hwy 114, to junction U.S. Hwy 5, to junction VT Hwy 11, to junction U.S. Hwy 7, to junction VT Hwy 9, then along VT Hwy 9 to the VT-NY State line; those points in NY, on and east of a line beginning at the NY-VT State line, and extending along NY Hwy 7, to junction U.S. Hwy 9W, to junction NY Hwy 32, to junction NY Hwy 23, to junction NY Hwy 30, to junction NY Hwy 17, then along NY Hwy 17 to the NY-PA State line; those points in PA on and east of a line beginning at the PA-NY State line, and extending along PA Hwy 370, to junction PA Hwy 247, to junction U.S. Hwy 6, to junction Interstate Hwy 81, to junction U.S. Hwy 22, to junction U.S. Hwy 11, then along U.S. Hwy 11 to the PA-MD State line; those points in VA on and east of a line beginning at the VA-WV State line, and extending along U.S. Hwy 11 to junction VA Hwy 16, to junction VA Hwy 614, to junction VA Hwy 749, to junction U.S. Hwy 21, to junction VA Hwy 805, to junction VA Hwy 94, to junction U.S. Hwy 58, to the Atlantic Ocean. The purpose of this filing is to eliminate the gateway of Smyth County, VA.

NOTE.—The purpose of this partial republication is to correct the territorial description. The remainder of this letter-notice remains as previously published.

No. MC 61825 (Sub-No. E1210), filed May 13, 1974. Applicant: ROY STONE TRANSFER CORP., P.O. Box 385, Collinsville, VA 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth Street NW., DC 20036. *Furniture parts and materials, equipment, and supplies* used in the manufacture and distribution of new furniture and furniture parts, except commodities in bulk, from points in AL, AZ, AR, CA, CO, FL, GA, ID, KS, LA, MS, MT, NV, NM, OK, OR, TN, TX, UT, WA and WY and from those points in WV, KY, IN, IL, MO, IA, and NE on and south of a line beginning at the VA-WV State line, and extending along the New River to U.S. Hwy 19, to junction WV Hwy 3, to junction U.S. Hwy 119, to junction WV Hwy 10, to junction WV Hwy 37 to the WV-KY State line, and extending along KY Hwy 32 to junction Interstate Hwy 64, to junction KY Hwy 36, to junction U.S. Hwy 62, to junction KY Hwy 32, to junction U.S. Hwy 25, to junction U.S. Hwy 460, to junction KY Hwy 227, to junction KY Hwy 607, to junction U.S. Hwy 127, to junction KY Hwy 355, to junction KY Hwy 22, to junction KY Hwy 573, to junction KY Hwy 157 to the Trimble-Oldham County line, and extending along the Trimble-Oldham County line to the KY-IN State line, and extending north along the OH River to the Clark-Jefferson County line and extending along the Clark-Jefferson County line to IN Hwy 362, to junction IN Hwy 3, to junction IN Hwy 56, to junction IN Hwy 39, to junction U.S. Hwy 50, to junction IN Hwy 37, to junction IN Hwy 58, to junction IN Hwy 67, to junction U.S. Hwy 41, to junction U.S. Hwy 50 to the IN-IL State line and extending along U.S. Hwy 50 to junction IL Hwy 127, to junction IL Hwy 140, to junction IL Hwy 4, to junction IL Hwy 16, to junction IL Hwy 100, to junction IL Hwy 96, to junction U.S. Hwy 24 to the IL-MO State line, and extending along U.S. Hwy 24 to junction U.S. Hwy 61, to junction MO Hwy 6, to junction MO Hwy 15, to junction U.S. Hwy 136, to junction MO Hwy 149 to the MO-IA State line, and extending along IA Hwy 216 to junction IA Hwy 5, to junction IA Hwy 2, to junction U.S. Hwy 65, to junction U.S. Hwy 34 to the IA-MO State line, and extending along U.S. Hwy 34 to junction U.S. Hwy 73, to the Platte River and extending along the Platte River to NE Hwy 92, to junction U.S. Hwy 81, to junction NE Hwy 22, to junction NE Hwy 39, to junction NE Hwy 14, to junction NE Hwy 84, to junction U.S. Hwy 81 to the NE-SD State line; from those points in MN, ND, and SD on and west of a line beginning at the NE-SD State line, and extending along U.S. Hwy 81 to junction U.S. Hwy 16, to junction Interstate Hwy 90, to junction SD Hwy 37, to junction U.S. Hwy 212, to junction U.S. Hwy 281 to the SD-ND State line, and extending along U.S. Hwy 281 to junction ND Hwy 11, to junction ND Hwy 32, to junction ND Hwy 46, to junction ND Hwy 18, to junction Interstate Hwy 94 to the ND-MN State line, and extending along U.S. Hwy 10 to junction U.S. Hwy 59, to junction MN Hwy 113, to junction U.S. Hwy 71 to the United States-Canadian International Boundary line, to New York, NY. The purpose of this filing is to eliminate points in Smyth County, VA, Lynchburg, VA, and Baltimore, MD.

No. MC 61825 (Sub-No. E1211), filed May 13, 1974. Applicant: ROY STONE TRANSFER CORP., P.O. Box 385, Collinsville, VA 24078. Applicant's repesentative: Harry J. Jordan, 1000 Sixteenth Street NW., DC 20036. *Materials, equipment, and supplies* used in the manufacture, packaging, and distribution of new furniture and furniture parts, except commodities in bulk, from points in CT, ME, MA, NH, RI, and VT to points in VA on and south of a line beginning at the NC-VA State line extending along VA Hwy 89 to junction U.S. Hwy 58, to junction VA Hwy 100, to junction U.S. Hwy 11, to junction Hwy 460, to junction VA Hwy 727, to junction VA Hwy 615, to junction VA Hwy 600, to junction U.S. Hwy 501 to the VA-NC State line. The purpose of this filing is to eliminate the gateway of Elizabeth City, NC, and/or Lynchburg, VA.

No. MC 61825 (Sub-No. E1212), filed May 13, 1974. applicant: ROY STONE TRANSFER CORP., P.O. Box 385, Collinsville, VA 24078. Applicant's representative: Harry J. Jordan, 1000 16th Street NW., Washington, DC 20036. *Furniture parts and furniture materials*, except commodities in bulk, from points in MA, CT, and RI to points in LA. The purpose of this filing is to eliminate the gateway of points in Smyth County, VA, Lynchburg, VA, and Martinsville, VA.

No. MC 61825 (Sub-No. E1213), filed May 13, 1974. applicant: ROY STONE TRANSFER CORP., P.O. Box 385, Collinsville, VA 24078. Applicant's representative: Harry J. Jordan, 1000 16th Street NW., Washington, DC 20036. *Furniture parts and furniture materials*, except commodities in bulk, from those points in KY on and south of a line beginning at the TN-KY State line, and extending along U.S. Hwy 127 to junction KY Hwy 90, to junction KY Hwy 80, to junction KY Hwy 91, to junction U.S. Hwy 62, to junction U.S. Hwy 45 to the KY-IL State line, to points in DE; to those points in NJ and NY on and east of a line beginning at the Atlantic Ocean, and extending along the DE River to U.S. Hwy 1, to junction NJ Hwy 91, to junction NJ Hwy 27, to the Garden State Parkway, to junction NJ Hwy 506, to junction NJ Hwy 17, to the Garden State Parkway, to junction NJ Hwy 502, to junction NJ Hwy 505 to the NJ-NY State line, and extending along NY Hwy 303 to junction U.S. Hwy 9W, to junction U.S. Hwy 6 to the NY-CT

State line. The purpose of this filing is to eliminate the gateway of points in Smyth County, VA, Lynchburg, VA, and Martinsville, VA.

No. MC 65941 (Sub-No. E36), filed January 24, 1975. Applicant: TOWER LINES, INC., P.O. Box 6010, Wheeling, WV 26003. Applicant's representative: George V. Thieroff (same as above). *Oil, grease, paper, roofing, metal and clay products, and materials, equipment, and supplies* used or useful in the production and packing of metal and clay products and building, stone, structural steel, and heavy machinery and equipment (except commodities in bulk), (1)(a) between points in Washington, Allegheny, Greene, Westmoreland, Fayette, and Somerset Counties, PA that are on and west of U.S. Hwy 219, on the one hand, and, on the other, points in OH on and west of a line beginning at the OH-WV State line and extending along U.S. Hwy 250 to Lake Erie, (1)(b) between points in Beaver, Butler, Armstrong, Indiana, and Clarion Counties, PA that are on and south of Interstate Hwy 80, points in Clearfield County, PA that are on and south of Interstate Hwy 80 and on and west of U.S. Hwy 219, points in Cambria County, PA that are on and west of U.S. Hwy 219, points in Jefferson County, PA that are on and South of Interstate Hwy 80, and points in Somerset County, PA that are on and west of U.S. Hwy 219, on the one hand, and, on the other, points in OH on and south of a line beginning at the OH-WV State line and then along Interstate Hwy 70 to junction OH Hwy 209, then along OH Hwy 209 to junction OH Hwy 83, then along OH Hwy 83 to junction OH Hwy 541, then along OH Hwy 541 to junction U.S. Hwy 62, then along U.S. Hwy 62 to junction OH Hwy 37, then along OH Hwy 37 to junction U.S. Hwy 33, then along U.S. Hwy 33 to the OH-IN State line, (2) between points in PA on and west of U.S. Hwy 219, on the one hand, and, on the other, points in OH and south of Interstate Hwy 70, (3) between points in PA on, south, and west of a line beginning at the WV-PA State line and extending along Interstate Hwy 70 to junction U.S. Hwy 219, then along U.S. Hwy 219 to the PA-WV State line, on the one hand, and, on the other, points in OH on and west of a line beginning at the OH-WV State line, then along U.S. Hwy 250 to junction Interstate Hwy 77, then along Interstate Hwy 77 to junction OH Hwy 59, then along OH Hwy 59 to junction OH Hwy 91, then along OH Hwy 91 to Lake Erie, (4) between points in Monongalia, Taylor, Marion, and Barbour Counties, WV, on the one hand, and, on the other, points in OH on, west, and north of a line beginning at the OH-WV State line, then along OH Hwy 78 to junction OH Hwy 60, then along OH Hwy 60 to junction OH Hwy 93, then along OH Hwy 93 to junction U.S. Hwy 50, then along U.S. Hwy 50 to the OH-IN State line and points on and west of a line beginning at the OH-WV State line, and extending along OH Hwy 45 to junction OH Hwy 88 to the OH-PA State line, (5)(a) between points in Kanawha County, WV, on and north of U.S. Hwy 60, on the one hand, and, on the other, points in OH, on, north, and east of a line beginning at the OH-WV State line and extending along OH Hwy 78 to junction OH Hwy 800, then along OH Hwy 800 to junction U.S. Hwy 250, then along U.S. Hwy 250 to junction OH Hwy 94,then along OH Hwy 94 to junction OH Hwy 604, then along OH Hwy 604 to junction OH Hwy 83, then along OH Hwy 83 to junction U.S. Hwy 224, then along U.S. Hwy 224 to junction OH Hwy 58, then along OH Hwy 58 to Lake Erie, (5)(b) between points in Harrison, Doddridge, Lewis, and Gilmer Counties, WV, on the one hand, and, on the other, points in OH on and north of a line beginning at the OH-WV line and extending along Interstate Hwy 70 to junction Interstate Hwy 71, then along Interstate Hwy 71 to junction Interstate Hwy 75, then along Interstate Hwy 75 to the OH-KY State line, (6) between points in Tyler, Pleasants, Ritchie, Calhourn, Wirt, and Wood Counties, WV, on the one hand, and, on the other, points in Ashtabula, Lake, Geauga, Trumbull, Mahoning, Belmont, Columbiana, Portage, Carroll, Jefferson, and Harrison Counties, OH, (7) between points in Roane and Jackson Counties, WV and points in Putnam County, WV on and north of U.S. Hwy 60, on the one hand, and, on the other, points in Ashtabula, Lake, Geauga, Trumbull, Mahoning, Belmont, Wayne, Medina, Lorain, Ottawa, Lucas, Portage, Carroll, Jefferson, Harrison, Summitt, Cuyahoga, Erie, Huron, Sandusky, and Wood Counties, OH, (8) between points in Cabell County, WV, on and north of U.S. Hwy 60 and points in Mason County, WV, on the one hand, and, on the other, points in Ashtabula, Lake, Geauga, Trumbull, Mahoning, Belmont, Portage, Carroll Jefferson, Harrison, Summitt, and Cuyahoga Counties, OH, (9) between points in Pendleton, Randolph, Upshur, Braxton, Clay, Webster, Nicholas, and Pocahontas Counties, WV and points in Fayette and Greenbrier Counties, WV on and north of U.S. Hwy 60, on the one hand, and, on the other, points in OH on and north of a line beginning at the OH-WV State line, then along Interstate Hwy 70 to junction OH Hwy 13, then along OH Hwy 13 to junction OH Hwy 657, then along OH Hwy 657 to junction OH Hwy 314, then along OH Hwy 314 to junction OH Hwy 95, then along OH Hwy 95 to junction U.S. Hwy 30S, then along U.S. Hwy 30S to junction U.S. Hwy 68, then along U.S. Hwy 68 to junction U.S. Hwy 30N, then along U.S. Hwy 30N to junction U.S. Hwy 30, then along U.S. Hwy 30 to the OH-IN State line, (10) between points in Tucker, Grant, Hardy, Mineral, Hampshire, Morgan, Berkeley, and Jefferson Counties, WV, on the one hand, and, on the other, points in OH on and north of a line beginning at the OH-WV State line, then along OH Hwy 78 to junction OH Hwy 37, then along OH Hwy 37 to junction U.S. Hwy 22, then along U.S. Hwy 22 to junction OH Hwy 138, then along OH Hwy 138 to junction U.S. Hwy 62, then along U.S. Hwy 62 to the OH-KY State line. The purpose of this filing is to eliminate the gateway of Martins Ferry, Ohio (excluding that portion of WV in the Martins Ferry, OH, commercial zone, as defined by the Commission).

No. MC 83539 (Sub-No. E346), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment, between points in the State of AL in and west of Jackson, Marshall, Etowah, Calhoun, Talladega, Coosa, Elmore, Montgomery, Pike, Crenshaw, and Covington counties, on the one hand, and, on the other, points in the State of MA. The purpose of this filing is to eliminate the gateways of Philadelphia, PA, points within a 50-mile radius of Nashville, TN, and points in KY.

No. MC 83539 (Sub-No. E349), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment, between points in the State of AL, on the one hand, and, on the other, points in the State of OH. The purpose of this filing is to eliminate the gateways of points within a 50-mile radius of Nashville, TN, and points in KY.

No. MC 83539 (Sub-No. E350), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment, between points in the State of AL, on the one hand, and, on the other, points in the State of PA. The purpose of this filing is to eliminate the gateways of points within a 50-mile radius of Nashville, TN, and points in KY.

No. MC 83539 (Sub-No. E351), filed May 31, 1977. Applicant: C & H

TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment, between points in the State of AL, on the one hand, and, on the other, points in the State of RI. The purpose of this filing is to eliminate the gateways of Philadelphia, PA, points within a 50-mile radius of Nashville, TN, and points in KY.

No. MC 83539 (Sub-No. E352), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment, between points in the State of AL in, north and west of Marion, Winston, Lawrence, Morgan, and Madison Counties, on the one hand, and, on the other, points in the State of VA in and west of Dickinson, Russell, and Washington Counties. The purpose of this filing is to eliminate the gateways of points within a 50-mile radius of Nashville, TN, and points in KY.

No. MC 83539 (Sub-No. E356), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment, between points in Mississippi County, AR, on the one hand, and, on the other, points in the State of MO, in, north and west of Buchanan, Clinton, Caldwell, Livingston, Linn, Sullivan, Adair, and Schuyler Counties, Restricted against: (1) Service in the stringing or picking up of any of the above commodities in connection with main or truck pipelines, and (2) service in the stringing or picking up of pipe in connection with oil or gas pipelines. The purpose of this filing is to eliminate the gateways of points in KY and IL.

No. MC 83539 (Sub-No. E432), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). (1) *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment, and (2) *related machinery parts, and related contractors' materials and supplies* when moving in connection with the commodities in (1) above, between (a) points in MD, on the one hand, and, on the other, points in VA in and west of Craig, Montgomery, Floyd, and Patrick Counties; (b) points in MD in, west, and north of Frederick, Carroll, Baltimore, Baltimore City, Harford, and Cecil Counties, on the one hand, and, on the other, points in VA in and west of Rockingham, Augusta, Rockbridge, Bedford, Pittsylvania, and Halifax Counties; (c) points in MD in and west of Frederick County, on the one hand, and, on the other, points in VA in, west, and south of Rockingham, Augusta, Nelson, Amherst, Campbell, Charlotte, Lunenburg, Nottoway, Brunswick, Greensville, Sussex, Southampton, Isle of Wight, Warwick, York, and in Accomac, and Northhampton Counties; (d) points in MD in and west of Washington Counties, on the one hand, and, on the other, points in VA. The purpose of this filing is to eliminate the gateway of points in PA.

No. MC 83539 (Sub-No. E433), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). (1) *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment, and (2) *related machinery parts and related contractors' materials and supplies* when moving in connection with the commodities in (1) above, (a) between points in MD, on the one hand, and, on the other, points in WV in and west of Mason, Putnam, Kanawha, Boone, Logan, and Mingo Counties, and in and north of Ohio County; (b) points in MD in and east of Washington County, on the one hand, and, on the other, points in WV in and west of Morgan County; (c) points in MD in and east of Wicomico and Somerset Counties, on the one hand, and, on the other, points in WV. The purpose of this filing is to eliminate the gateway of points in PA.

No. MC 83539 (Sub-No. E434), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). (1) *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment and (2) *related machinery parts and related contractors' materials and supplies* when moving in connection with the commodities in (1) above, between points in MD, on the one hand, and, on the other, points in WI, except that no service shall be performed in the stringing or picking up of pipe in connection with oil or gas pipelines. The purpose of this filing is to eliminate the gateways of points in IN and PA.

No. MC 83539 (Sub-No. E435), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). (1) *Commodities*, the transportation of which because of their size or weight, require the use of special equipment, and parts thereof when moving in connection with such commodities, between (a) points in AR in and east of Caly, Greene, Craighead, Poinsett, Cross, and Crittenden Counties, on the one hand, and, on the other, points in CO in the west of La Plata, San Juan, Ouray, Gunnison, Chaffee, Park, Jefferson, Boulder, and Weld Counties; (b) points in AR in Mississippi and Crittenden Counties, on the one hand, and, on the other, points in the State of CO, restricted against (1) the stringing or picking up of any of the above commodities in connection with main or truck pipelines, and (2) the stringing or picking up of pipe in connection with oil or gas pipelines. The purpose of this filing is to eliminate the gateways of points in IL, MO, and Wichita, KS.

No. MC 83539 (Sub-No. E437), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). (1) *Structural steel*, the transportation of which because of size or weight requires the use of special equipment, from the facilities of C.F. & I. Steel Corp. at or near Pueblo, CO, to points in NH. The purpose of this filing is to eliminate the gateways of points in IN, Philadelphia, PA, and Worcester, MA.

No. MC 83539 (Sub-No. E438), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Structural steel*, the transportation of which because of size or weight requires the use of special equipment, from the facilities of C. F. & I. Steel Corp., at or near Pueblo, CO, to points in VT. The purpose of this filing is to eliminate the gateways of points in IN, Philadelphia, PA, and Worcester, MA.

Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). (1) *Self-propelled articles* (except in driveaway service), each weighing 15,000 pounds or more, and (2) *related machinery, parts, and supplies* moving in connection with the commodities in (1) above between: (a) points in MO, in and west of Pike, Montgomery, Gasconade, Phelps, Dent, Shannon, Carter, Butler, Dunklin, and Pemiscot Counties, on the one hand, and, on the other, points in OH in east and north of Erie, Lorain, Medina, Summit, Stark, and Columbiana Counties; (b) points in MO in and west of Ralls, Audrain, Callaway, Cole, Moniteau, Morgan, Benton, Hickory, St. Clair, Cedar, Barton, Jasper, Lawrence, Christian, Douglas, Howell, Oregon, Ripley, Butler, Dunklin, and Pemiscot Counties, on the one hand, and, on the

other, points in OH, restricted against the transportation of any shipment which (1) originates at St. Louis or Kansas City, MO, and which is destined to any point in IA, KS, or MO, or (2) originates at any point in IA, KS, or MO and which is destined to St. Louis or Kansas City, MO, and further restricted to commodities which are transported on trailers. The purpose of this filing is to eliminate the gateways of points in IA, IL and IN, or points in AR and KY.

No. MC 83539 (Sub-No. E447), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Self-propelled articles* (except in driveaway service), each weighing 15,000 pounds or more and *related machinery, parts, and supplies* moving in connection therewith, between points in OH, on the one hand, and, on the other, points of OK. The purpose of this filing is to eliminate the gateway of points in IN.

Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities,* the transportation of which, because of their size or weight, require the use of special equipment, between points in MA, on the one hand, and, on the other, points in MI. The purpose of this filing is to eliminate the gateways of Philadelphia, PA.

No. MC 83539 (Sub-No. E450), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities,* the transportation of which, because of size or weight, require the use of special equipment, between: (A) points in MA, on the one hand, and, on the other, points in that part of OH in, west, and south of Ottawa, Sandusky, Seneca, Crawford, Richland, Ashland, Medina, Summit, Portage, and Trumbull Counties; and (B) points in that part of MA, in and east of Worcester County, on the one hand, and, on the other, points in OH. The purpose of this filing is to eliminate the gateway of Philadelphia, PA.

No. MC 83539 (Sub-No. E451), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities,* the transportation of which, because of size or weight, require the use of special equipment, between points in MA on the one hand, and, on the other, points in that part of TN in and west of Clay, Overton, Putnam, DeKalb, Warren Coffee, and Franklin Counties. The purpose of this filing is to eliminate the gateways of Philadelphia, PA, any points in KY, and Nashville, TN.

No. MC 83539 (Sub-No. E452), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities,* the transportation of which, because of size or weight, require the use of special equipment between points in MA on the one hand, and, on the other, points in VA. The purpose of this filing is to eliminate the gateway of Philadelphia, PA.

No. MC 83539 (Sub-No. E453), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities,* the transportation of which, because of size or weight, require the use of special equipment between points in MA on the one hand, and, on the other, points in WV. The purpose of this filing is to eliminate the gateway of Philadelphia, PA.

No. MC 83539 (Sub-No. E454), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities,* the transportation of which, because of size or weight, require the use of special equipment and parts thereof when moving in connection with such commodities between points in MI (Lower Peninsula), on the one hand, and, on the other, points in MO. Restrictions: (1) No service shall be performed in the stringing or picking up of any of the above commodities in connection with main or trunk pipelines; and (2) no service shall be performed in stringing or picking up of pipe in connection with oil or gas pipelines. the purpose of this filing is to eliminate the gateways of IL and IN.

No. MC 83539 (Sub-No. E455), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities,* the transportation of which, because of size or weight, require the use of special equipment; and related machinery parts, and related contractors' materials and supplies when moving in connection with such commodities; between points in MI, on the one hand, and, on the other, points in NJ. The purpose of this filing is to eliminate the gateway of PA.

No. MC 83539 (Sub-No. E456), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities,* the transportation of which, because of size or weight, require the use of special equipment; and related machinery parts, and related contractors' materials and supplies when moving in connection with such commodities, between points in MI, on the one hand, and, on the other, points in NY. The purpose of this filing is to eliminate the gateway of PA.

No. MC 83539 (Sub-No. E457), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities,* the transportation of which, because of size or weight, require the use of special equipment, and parts thereof when moving in connection with such commodities, between (a) points in MI (Upper Peninsula), on the one hand, and, on the other, points in that part of NC in, west, and south of Madison, Buncombe, Rutherford, Cleveland, Lincoln, Mecklenburg, Union, and Anson Counties; (b) points in that part of MI in and west of Keweenaw, Houghton, Iron, Dickinson, and Menominee Counties, on the one hand, and, on the other, points in NC; (C) points in that part of MI in and west of Marquette, and Delta Counties on the one hand, and, on the other, points in that part of NC in and west of Vance, Franklin, Nash, Edgecombe, Wilson, Greene, Lenoir, Duplin, and Anslow. The purpose of this filing is to eliminate the gateways of KY and points within a 50 mile radius of Nashville, TN.

No. MC 83539 (Sub-No. E458), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities,* the transportation of which, because of size or weight, require the use of special equipment between points in MI, on the one hand, and, on the other, points in RI. The purpose of this filing is to eliminate the gateway of Philadelphia, PA.

No. MC 83539 (Sub-No. E459), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities,* the transportation of which, because of their size or weight, require the use of special equipment, and parts thereof when moving in connection with such commodities, between: (A) points in MI, on the one hand, and, on the other, points in that part of SC, in, east, and south of Anderson, Abbeville, Greenwood, Edgefield, Aiken, Barnwell, Allendale, Hampton, and Beaufort Counties; (B) points in that part of MI, in

and west of Cheboygan, Charlevoix, Antrim, Grand Traverse, Wexford, Lake, Newaygo, Kent, Allegan, Kalamazoo, Van Buren, and Cass Counties, on the one hand, and, on the other, points in SC; and (C) points in MI, in and west of Huron, Tuscola, Genesee, Shiawassee, Ingham, Jackson, Calhoun, and Branch Counties, on the one hand, and, on the other, points in that part of SC, in, east, and south of Anderson, Abbeville, Greenwood, Edgefield, Aiken, Orangeburg, Dorchester, and Charleston Counties. Restriction: The authority granted immediately above is subject to the condition that the carrier shall not transport aircraft and missiles, and parts thereof. The purpose of this filing is to eliminate the gateways of KY, points within a 50-mile radius of Nashville, TN, and NC or GA.

No. MC 83539 (Sub-No. E460), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of size or weight, require the use of special equipment, and parts thereof when moving in connection with such commodities, between: (A) points in that part of MI in and west of Marquette and Delta Counties, on the one hand, and, on the other, points in TN; (B) points in MI, on the one hand, and, on the other, points in that part of TN, in and west of Macon, Jackson, Putnam, Cumberland, Bledsoe, and Hamilton Counties. The purpose of this filing is to eliminate the gateways of KY and points within a 50-mile radius of Nashville, TN.

No. MC 83539 (Sub-No. E461), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of size or weight, require the use of special equipment, and parts thereof when moving in connection with such commodities between points in MN, on the one hand, and, on the other, points in OH. Restrictions: (1) No service shall be performed in the stringing or picking up of any of the above commodities in connection with main or trunk pipelines. (2) No service shall be performed in the stringing or picking up of pipe in connection with oil or gas pipelines. The purpose of this filing is to eliminate the gateways of IL and IN.

No. MC 83539 (Sub-No. E462), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of size or weight, require the use of special equipment and related machinery parts, and related contractors' materials and supplies when moving in connection with such commodities, between points in MN, on the one hand, and, on the other, points in VA. Restriction: No service shall be performed in the stringing or picking up of pipe in connection with oil or gas pipelines. The purpose of this filing is to eliminate the gateways of IL and IN.

No. MC 83539 (Sub-No. E463), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of size or weight, require the use of special equipment; and related machinery parts, and related contractors' materials and supplies when moving in connection with such commodities between points in MN, on the one hand, and, on the other, points in WV. Restriction: No service shall be performed in the stringing or picking up of pipe in connection with oil or gas pipelines. The purpose of this filing is to eliminate the gateways of IL and IN.

No. MC 83539 (Sub-No. E464), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of size or weight, require the use of special equipment and parts thereof when moving in connection with such commodities; between points in MS, on the one hand, and, on the other, points in OH. Restriction: No service shall be performed in the stringing or picking up of any of the above commodities in connection with main or trunk pipelines. The purpose of this filing is to eliminate the gateway of KY.

No. MC 83539 (Sub-No. E465), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of size or weight, require the use of special equipment and, related machinery parts, and related contractors' materials and supplies when moving in connection with such commodities; between points in MO, on the one hand, and, on the other, points in OH. Restrictions: (1) No service shall be performed in the stringing or picking up of any of the above commodities in connection with main or trunk pipelines. (2) No service will be performed in the stringing or picking up of pipe in connection with oil or gas pipelines. The purpose of this filing is to eliminate the gateways of IL and IN.

No. MC 83539 (Sub-No. E466), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of size or weight, require the use of special equipment, and parts thereof when moving in connection with such commodities, between points in MO, on the one hand, and, on the other, points in VA. Restrictions: (1) No service shall be performed in the stringing or picking up of any of the above commodities in connection with main or trunk pipelines. (2) No service shall be performed in the stringing or picking up of pipe in connection with oil or gas pipelines. The purpose of this filing is to eliminate the gateways of IL, and IN, or KY.

No. MC 83539 (Sub-No. E467), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of size or weight, require the use of special equipment, and related machinery parts when moving in connection with such commodities, between points in MO, on the one hand, and, on the other, points in WV. Restrictions: (1) No service shall be performed in the stringing or picking up of any of the above commodities in connection with main or trunk pipelines, (2) no service shall be performed in the stringing or picking up of pipe in connection with oil or gas pipelines. The purpose of this filing is to eliminate the gateways of IL, IN, or KY.

No. MC 83539 (Sub-No. E468), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of size or weight, require the use of special equipment between points in MT, on the one hand, and, on the other, points in VA. Restrictions: No service shall be performed in the stringing or picking up of any of the above commodities in connection with main or trunk pipelines. No service shall be performed in the stringing or picking up of pipe in connection with oil or gas pipelines. The authority granted shall be restricted against the transportation of boats. the purpose of this filing is to eliminate the gateway of SD, IA, IL, and IN.

No. MC 83539 (Sub-No. E469), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of size or

weight, require the use of special equipment between points in MT, on the one hand, and, on the other, points in WV. Restrictions: No service shall be performed in the stringing or picking up of any of the above commodities in connection with main or trunk pipelines. No service shall be performed in the stringing or picking up of pipe in connection with oil or gas pipelines; the authority granted shall be restricted against the transportation of boats. The purpose of this filing is to eliminate the gateways of SD, IA, IL, and IN.

No. MC 83539 (Sub-No. E470), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of size or weight, require the use of special equipment, between points in that part of NE, in, west, and south of Dawes, Box Butte, Morrill, Garden, Keith, Lincoln, Frontier, and Redwillow Counties, on the one hand, and, on the other points in that part of WI in and east of Door, Kewaunee, Manitowoc, Sheboygan, Ozaukee, Milwaukee, Racine, and Kenosha Counties. Restrictions: No service shall be performed in the stringing or picking up of any of the above commodities in connection with main or trunk pipelines. The carrier shall not transport machinery, equipment, materials, and supplies used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, from, to or between points in IL. The authority granted under the two commodity descriptions above shall be restricted against the transportation of cast iron pressure pipe and fittings and accessories therefor when moving with such pipe, from Council Bluffs, IA. No service shall be performed in the stringing or picking up of pipe in connection with oil or gas pipelines. The purpose of this filing is to eliminate gateway points in IL and IN.

No. MC 83539 (Sub-No. E493), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, by reason of size or weight, require the use of special equipment; and related machinery and contractor's materials and supplies when their transportation is incidental to the transportation of the commodities authorized above, between points in SD, on the one hand, and, on the other, points in WV. Restriction: The authority granted herein is subject to the condition that the carrier shall not engage in the stringing or picking up of pipe along pipelines. The purpose of this filing is to eliminate the gateway of OH.

No. MC 83539 (Sub-No. E494), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment anf related machinery parts and related contractors' materials and supplies when moving in connection with such commodities, between points in Union County, SD, on the one hand, and, on the other, points in Racine and Kenosha Counties, WI, restricted against the stringing or pickup of pipe in connection with oil or gas pipelines. The purpose of this filing is to eliminate the gateways of IA, IL, and IN.

No. MC 83539 (Sub-No. E497), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of size or weight, require the use of special equipment and related machinery parts and related contractors' materials and supplies when their transportation is incidental to the transportation of the commodities authorized above, between points in VA and WI, restricted against the stringing or picking up of pipe in connection with oil, gas, main, or truck pipelines. The purpose of this filing is to eliminate the gateways of IN and IL.

No. MC 83539 (Sub-No. E498), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of size or weight, require the use of special equipment (except boats), and related machinery parts and related contractors' materials and supplies when moving in connection with such commodities, between points in VA and points in WY, restricted against the stringing or picking up of any of the above commodities in connection with main or truck pipelines. The purpose of this filing is to eliminate the gateways of IN, IL, IA, and SD.

No. MC 83539 (Sub-No. E4799) filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment and related machinery parts and related contractors' material and supplies when moving in connection with such commodities between points in WV and points in WI, restricted against the stringing or picking up of any of the above commodities in connection with oil, gas, main or truck pipelines. The purpose of this filing is to eliminate the gateways of IN and IL.

No. MC 83539 (Sub-No. E590), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Heavy machinery*, (A) between those points in MD in and west of Queen Annes, Anne Arundel, Calvert, and St. Marys Counties, on the one hand, and, on the other, those points in NC in and west of Alleghany, Wilkes, Iredell, Mecklenburg, and Union Counties; (B) between those points in MD in and west of Frederick County, on the one hand, and, on the other, points in NC; (C) between those points in MD in, west and north of Dorchester and Somerset Counties, on the one hand, and, on the other, those points in NC in and west of Madison, Buncombe, and Henderson Counties. The purpose of this filing is to eliminate the gateways of PA and VA.

No. MC 83539 (Sub-No. E591), filed May 31, 1977. Applicant: C & H TRANSPORTATION, P.O. Box 5976, Dallas, TX 75222. Applicant's representative: H. N. Cunningham III (same as above). *Heavy machinery*, between points in MD, in, west, and north of Queen Annes, Anne Arundel, Calvert, and St. Marys Counties, on the one hand, and, on the other, points in SC (PA, VA, and NC*). Restriction: The authority granted immediately above is subject to the condition that the carrier shall not transport aircraft and missiles and parts thereof. The purpose of this filing is to eliminate the gateways indicated by asterisks above.

No. MC 102567 (Sub-No. E71) (Correction), filed June 3, 1974, published in the FEDERAL REGISTER issue of June 4, 1975, and republished, as corrected, this issue. Applicant: MC NAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, LA 71010. Applicant's representative: Joe Day (same as above). *Petroleum products* (except liquefied petroleum gases), as defined in Appendix XIII to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209, in bulk, in tank vehicles, from those points in LA, AR and TX within 150 miles of Henderson, TX, which are south of a line beginning at Alexandria, LA, and extending along U.S. Hwy 71 to junction U.S. Hwy 59, then along U.S. Hwy 59 to junction TX Hwy 155, then along TX Hwy 155 to junction U.S. Hwy 79, then along U.S. Hwy 79 to a point on U.S. Hwy 79 within 150 miles of Henderson, TX, near Rockdale, TX, to those points in AR north of a line beginning

at the AR-OK State line and extending along U.S. Hwy 62 to junction AR Hwy 25, then along AR Hwy 25 to junction AR Hwy 18, then along AR Hwy 18 to junction AR Hwy 135, then along AR Hwy 135 to junction AR Hwy 140, then along AR Hwy 140 to the AR-TN State line. The purpose of this filing is to eliminate the gateways of points in that part of LA north and west of a line beginning at the LA-TX State line and extending along U.S. Hwy 84 to junction U.S. Hwy 167, then along U.S. Hwy 167 to the LA-AR State line.

NOTE.—The purpose of this republication is to correct the origin states, to include TX, previously omitted.

No. MC 102567 (Sub-No. E75) (Correction), filed June 3, 1974, published in the FEDERAL REGISTER issue of June 4, 1975, and republished, as corrected, this issue. Applicant: MC NAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, LA 71010. Applicant's representative: Joe Day (same as above). *Petroleum products* as described in Appendix XIII to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209, in bulk, in tank vehicles, (except liquefied petroleum gas, anhydrous ammonia, and asphalt), from those points in TX, LA, and AR within 150 miles of Henderson, TX, which are south of a line beginning at the AR-OK State line and extending along AR Hwy 4, to junction U.S. Hwys 59/71, to junction AR Hwy 24, to junction AR Hwy 4, then along AR Hwy 4 to junction AR Hwy 19, then along AR Hwy 19 to junction U.S. Hwy 82, then along U.S. Hwy 82 to a point near Strong, AR, to those points in TN north and east of a line beginning at the TN-KY State line and extending along U.S Hwy 51 to junction TN Hwy 22, then along TN Hwy 22 to the TN-MS State line. The purpose of this filing is to eliminate the gateways of El Dorado, AR, Cotton Valley, LA, and Waskom and Mt. Pleasant, TX.

NOTE.—The purpose of this republication is to correct the territorial description.

No. MC 106603 (Sub-No. E81), filed May 10, 1974. Applicant: DIRECT TRANSIT LINES, INC., P.O. Box 8099, Grand Rapids, MI 49508. Applicant's representative: Martin J. Leavitt, P.O. Box 400, Northville, MI 48167. *Such glazed building blocks and clay products, other than pottery,* which are building contractor's roofing, building, and insulating materials, from Lansing, MI, to points in MO within the St. Louis, MO-East St. Louis, IL, commercial zone as defined by the Commission and points in IA on the east of U.S. Hwy 63. The purpose of this filing is to eliminate the gateways of points in IN (except the plantsite of the Bethlehem Steel Corp., located at Burns Harbor, Porter County, IN) and Joliet, IL.

No. MC 106603 (Sub-No. E82), filed May 10, 1974. Applicant: DIRECT TRANSIT LINES, INC., P.O. Box 8099, Grand Rapids, MI 49508. Applicant's representative: Martin J. Leavitt, P.O. Box 400, Northville, MI 48167. *Such building blocks and clay products, other than pottery,* which are building contractor's roofing, building, and insulating materials (except in bulk), from Ypsilanti, MI, to points in IA on the east of U.S. Hwy 63, and points in MO within the St. Louis, MO-East St. Louis, IL, commercial zone as defined by the Commission. the purpose of this filing is to eliminate the gateways of points in IN (except the plantsite of the Bethlehem Steel Corp., located at Burns Harbor, Porter County, IN) and Joliet, IL.

No. MC 106603 (Sub-No. E101), filed May 10, 1974. Applicant: DIRECT TRANSIT LINES, INC., P.O. Box 8099, Grand Rapids, MI 49508. Applicant's representative: Martin J. Leavitt, P.O. Box 400, Northville, MI 48167. *Materials, equipment, and supplies used in the manufacture, installation, or application of roofing or roofing materials* (except commodities in bulk), restricted to those roofing or roofing materials that are building contractor's materials, equipment, and supplies, from points in DE, MD, NJ, NY, PA, DC, VA, on, north, and east of a line beginning at the VA-WV State line and extending southeast along U.S. Hwy 250 to junction U.S. Hwy 15, then south on U.S. Hwy 15 to junction U.S. Hwy 460, then southeast on U.S. Hwy 460 to junction VA Hwy 46, then south on VA Hwy 46 to junction VA Hwy 49, then south on VA Hwy 49 to junction VA Hwy 138, then south on VA Hwy 138 to junction U.S. Hwy 1, then southwest on U.S. Hwy 1 to the VA-NC State line, and points in WV on, north, and east on a line beginning at the WV-OH State line and extending east along U.S. Hwy 50 to junction U.S. Hwy 19, then south on U.S. Hwy 19 to junction U.S. Hwy 33, then east on U.S. Hwy 33 to junction U.S. Hwy 250, then southeast on U.S. Hwy 250 to the WV-VA State line, to points in MO within the St. Louis, MO-East St. Louis, IL, commercial zone as defined by the Commission and those points in MO within 10 miles of the west bank of the Mississippi River. The purpose of this filing is to eliminate the gateways of the plantsite of Certain-teed Products Corp. at Avery, OH.

No. MC 106603 (Sub-No. E102), filed May 10, 1974. Applicant: DIRECT TRANSIT LINES, INC., P.O. Box 8099, Grand Rapids, MI 49508. Applicant's representative: Martin J. Leavitt, P.O. Box 400, Northville, MI. 48167. *Materials, equipment, and supplies* used in the manufacture, installation, or application of roofing or roofing materials (except commodities in bulk), restricted to those roofing and roofing materials that are building contractor's equipment, materials, and supplies from points in NJ, on, north, and east of a line beginning at the PA-NJ State line and extending east along Interstate Hwy 276 to junction Interstate Hwy 295, then on Interstate Hwy 295 to junction U.S. Hwy 206, then south on U.S. Hwy 206 to junction NJ Hwy 70, then east along NJ Hwy 70 to junction NJ Hwy 72, then east on NJ Hwy 72 to the Atlantic Ocean, NY, and PA on and north of a line beginning at the OH-PA State line and extending east along Interstate Hwy 80 to junction PA Hwy 147, then south on PA Hwy 147 to junction PA Hwy 61, then south on PA Hwy 61 to junction U.S. Hwy 422, then southeast on U.S. Hwy 422 to junction Interstate Hwy 276, then east on Interstate Hwy 276 to the PA-NJ State line, to points in IL. The purpose of this filing is to eliminate the gateways of the plantsite of Certain-teed Products Corp. at Avery, OH, and Whiting, IN.

No. MC 106603 (Sub-No. E103), filed May 10, 1974. Applicant: DIRECT TRANSIT LINES, INC., P.O. Box 8099, Grand Rapids, MI 49508. Applicant's representative: Martin J. Leavitt, P.O. Box 400, Northville, MI. 48167. *Materials, equipment, and supplies* used in the manufacture, installation, or application of roofing or roofing materials (except commodities in bulk), restricted to those roofing and roofing materials that are building contractor's equipment, materials, and supplies, from points in DE, MD, NJ, south, on, and east of a line beginning at the PA-NJ State line and extending east along Interstate Hwy 276 to junction Interstate Hwy 295, then on Interstate Hwy 295 to junction U.S. Hwy 206, then south on U.S. Hwy 206 to junction NJ Hwy 70, then east on NJ Hwy 70 to junction NJ Hwy 72, then east on NJ Hwy 72 to the Atlantic Ocean, PA on and south of a line beginning at the OH-PA State line and extending east along Interstate Hwy 80 to junction PA Hwy 147, then south on PA Hwy 147 to junction PA Hwy 61, then south on PA Hwy 61 to junction U.S. Hwy 422, then southeast on U.S. Hwy 422 to junction Interstate Hwy 276, then east on Interstate Hwy 276 to the PA-NJ State line, VA on and west of a line beginning at the WV-VA State line and extending south along U.S. Hwy 21 to the VA-NC State line; DC and WV on and west of a line beginning at the WV-OH State line and extending south along U.S. Hwy 35 to junction Interstate Hwy 77, then south on Interstate Hwy 77 to junction U.S. Hwy 21, then south on U.S. Hwy 21 to the WV-VA State line, to points in IL on and north of a line beginning at the IL-IN State

line and extending west along IL Hwy 17 to junction IL Hwy 29, then south on IL Hwy 29 to junction IL Hwy 116, then west on IL Hwy 116 to junction U.S. Hwy 67, then south on U.S. Hwy 67 to junction IL Hwy 9, then west on IL Hwy 9 to the IL–IA State line. The purpose of this filing is to eliminate the gateways of the plantsite of Certain-teed Products Corp. at Avery, OH, and Whiting, IN.

No. MC 106603 (Sub-No. E104), filed May 10, 1974. Applicant: DIRECT TRANSIT LINES, INC., P.O. Box 8099, Grand Rapids, MI 49508. Applicant's representative: Martin J. Leavitt, P.O. Box 400, Northville, MI. 48167. *Materials, equipment, and supplies* used in the manufacture, installation or application of roofing or roofing materials (except commodities in bulk), restricted to those roofing and roofing materials that are building contractor's equipment, materials, and supplies from points in DE, MD (except points on and northwest of U.S. Hwy 220), NJ on and southwest of a line beginning at the PA-NJ State line and extending east along Interstate Hwy 276 to junction Interstate Hwy 295, then on Interstate Hwy 295 to junction U.S. Hwy 206, then south on U.S. Hwy 206 to junction NJ Hwy 70, then east on NJ Hwy 70 to junction NJ Hwy 72, then east on NJ Hwy 72 to the Atlantic Ocean, PA on and northeast of a line beginning at the PA-MD State line and extending north along U.S. Hwy 219 to junction PA Hwy 31, then west on PA Hwy 31 to junction PA Hwy 136, then west on PA Hwy 136 to junction PA Hwy 51, north on PA Hwy 51 to the PA-OH State line, then north along the PA-OH State line to Interstate Hwy 80, then those points on and south of a line extending east along Interstate Hwy 80 to junction PA Hwy 147, then south on PA Hwy 147 to junction PA Hwy 61, then south on PA Hwy 61 to junction U.S. Hwy 422, then southeast on U.S. Hwy 422 to junction Interstate Hwy 276, then on Interstate Hwy 276 to the PA-NJ State line, DC, VA on and northeast of a line beginning at the VA-WV State line and extending east along U.S. Hwy 50 to junction U.S. Hwy 17, then along U.S. Hwy 17 to the Atlantic Ocean, and points in WV on and north of a line beginning at the VA-WV State line and extending along U.S. Hwy 50 to junction U.S. Hwy 220, to points in IL on, north and west of a line beginning at the IL-MO State line at Chester, IL, and extending southeast along IL Hwy 3 to junction IL Hwy 149, then east on IL Hwy 149 to junction IL Hwy 13, then east on IL Hwy 13 to junction Interstate Hwy 57, then north on Interstate Hwy 57 to junction U.S. Hwy 50, then west of U.S. Hwy 50 to junction U.S. Hwy 51, then east on U.S. Hwy 51 to junction IL Hwy 16, then east on IL Hwy 16 to junction Interstate Hwy 57, then north on Interstate Hwy 57 to junction Interstate Hwy 74, then east on Interstate Hwy 74 to the IL-IN State line, then north along the IL-IN State line to IL Hwy 17, then points on and south of a line beginning at IL Hwy 17 and extending west to junction IL Hwy 29, then south on IL Hwy 29 to junction IL Hwy 116, then west on IL Hwy 116 to junction U.S. Hwy 67, then south on U.S. Hwy 67 to junction IL Hwy 9, then west on IL Hwy 9 to the IL–IA State line. The purpose of this filing is to eliminate the gateways of the plantsite of Certain-teed Products Corp. at Avery, OH and Whiting, IN.

No. MC 106603 (Sub-No. E105), filed May 10, 1974. Applicant: DIRECT TRANSIT LINES, INC., P.O. Box 8099, Grand Rapids, MI 49508. Applicant's representative: Martin J. Leavitt, P.O. Box 400, Northville, MI 48167. *Materials, equipment* and *supplies* used in the manufacture, installation or application of roofing or roofing materials (except commodities in bulk), restricted to those roofing and roofing materials that are building contractor's equipment, materials, and supplies, from points in DE, MD, on and northeast of a line beginning at the MD-PA State line and extending along Interstate Hwy 70 to junction U.S. Hwy 50, then east on U.S. Hwy 50 to junction MD Hwy 404, then along MD Hwy 404 to the MD-DE State line, NJ on and southwest of a line beginning at the PA-NJ State line and extending east along Interstate Hwy 276 to junction Interstate Hwy 295, then on Interstate Hwy 295 to junction U.S. Hwy 206, then south on U.S. Hwy 206 to junction NJ Hwy 70, then east on NJ Hwy 70 to junction NJ Hwy 72, then east on NJ Hwy 72 to the Atlantic Ocean, and PA on and northeast of a line beginning at the MD-PA State line and extending along Interstate Hwy 70 to junction PA Hwy 31, then west on PA Hwy 31 to junction PA Hwy 136, then west on PA Hwy 136 to junction PA Hwy 51, then north on PA Hwy 51 to the PA-OH State line, then north along the PA-OH State line to Interstate Hwy 80, then those points on and south of a line extending east along Interstate Hwy 80 to junction PA Hwy 147, then south on PA Hwy 147 to junction PA Hwy 61, then south on PA Hwy 61 to junction U.S. Hwy 422, then south on U.S. Hwy 422 to junction Interstate Hwy 276 to the PA-NJ State line, to points in IL bounded by a line beginning at the IL-MO State line and extending north along Interstate Hwy 57 to junction U.S. Hwy 50, then west on U.S. Hwy 50 to junction U.S. Hwy 51, then on U.S. Hwy 51 to junction IL Hwy 16, then east on IL Hwy 16 to junction Interstate Hwy 57, then south on Interstate Hwy 57 to junction U.S. Hwy 45, then south on U.S. Hwy 45 to junction IL Hwy 1, then south on IL Hwy 1 to the IL-KY State line. The purpose of this filing is to eliminate the gateways of the plant site of Certain-teed Products Corp. at Avery, OH and Whiting, IN.

No. MC 107012 (Sub-No. E307), filed May 16, 1974. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representative: David D. Bishop and Gary M. Crist (same as above). *New Furniture, uncrated,* (1) From points in Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Coosa, Cullman, Elmore, Etowah, Jefferson, Lee, Randolph, St. Clair, Shelby, Talladega, and Tallapoosa Counties, AL, to points in Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches, Red River, Sabine, and Webster Parishes, LA (*points in AR). Aroostook, Penobscot, Piscataquis, Somerset, Hancock, Knox, Waldo, and Washington Counties, ME (*Berne, IN). Points in TX (*points in AR). Chittenden, Franklin, Grand Isle, Lamoille, Addison, Orange, Washington, Calendonia, Essex and Orleans Counties, VT, Coos, Carroll and Grafton Counties, NH (*Berne, IN). (2) From points in Barbour, Bullock, Coffee, Covington, Crenshaw, Dale, Geneva, Henry, Houston, Macon, Montgomery, Pike, and Russell Counties, AL, to points in Bienville, Bossier, Caddo, Claiborne, DeSoto, Matchitoches, Red River, Sabine and Webster Parishes, LA (*points in AR). Bolivar, Carrol, Coahoma, Grenada, Homes, Humphrey, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, and Yazoo Counties, MS (*points in AR). Andrews, Archer, Baylor, Blanco, Borden, Bosque, Brown, Burnet, Callahan, Clay, Coke, Coleman, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Eastland, Ector, Edwards, Erath, Fisher, Gaines, Garza, Gillespie, Glasscock, Hamilton, Haskell, Hill, Hood, Howard, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Llamo, Lubbock, Lynn, McCullock, McLennan, Martin, Mason, Menard, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Parker, Reagan, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Upton, Val Verde, Wise, Yoakum, Young, Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Dallam, Deaf Smith, Donley, Floyd, Foard, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swicher,

Wheeler, Wichita, Wilbarger, Aransas, Atascosa, Bandera, Bee, Bexar, Brooks, Cameron, Dimmit, Duval, Frio, Goliad, Hidalgo, Jim Hogg, Jim Wells, Kaines, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Marverick, Medina, Nueces, Real, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, Zapata, Zavala, Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Ward, Winkler, Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collins, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt, and Wood Counties, TX (*points in AR). (3) Fron points in Colbert, Fayette, Franklin, Lamar, Lauderdale, Lawrence, Marion, Pickens, Tuscaloosa, Walker, and Winston Counties, AL, to points in Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Rapides, Saint Landry, Vernon, Acadia, Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis, Lafayette, Vermilion, Bienville, Bosssier, Caddo, Claiborne, DeSoto, Natchitoches, Red River, Sabine and Webster Parishes, LA (*points in AR). Points in ME (*Berne, IN) Bolivar, Carrol, Coahoma, Grenada, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, and Yazoo Counties, MS (*points in AR). Points in NH (*Berne, IN). Points in TX (*points in AR). Points in VT (*Berne, IN). (4) From points in DeKalb, Jackson, Limestone, Madison, Marshall, and Morgan Counties, AL, to points in Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Rapides, Saint Landry, Vernon, Acadia, Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis, Lafayette, Vermilion, Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll, Winn, Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches, Red River, Sabine, and Webster Parishes, LA (*points in AR). Points in ME (*Berne, IN). Bolivar, Carrol, Coahoma, Grenada, Homes, Humphreys, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, and Yazoo Counties, MS (*points in AR). Points in NH (*Berne, IN). Points in TX (*points in AR). Points in VT (*Berne, IN). (5) From points in Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington, and Wilcox Counties, AL, to points in Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches, Red River, Sabine, and Webster Parishes, La (*points in AR). Points in ME (*Berne, IN). Coos, Cheshire, Hillsboro, Sullivan, Carroll, and Grafton Counties, NH (*Berne, IN). Broome, Cayuga, Chemung, Chenango, Courtland, Delaware, Madison, Onondaga, Ontario, Otsego, Schoharie, Schuyler, Seneca, Tioga, Tompkins, Wayne, Yates, Allegany, Chatauqua, Erie, Genesee, Livingston, Monroe, Niagara, Cattaraugus, Orleans, Steuben, Wyoming, Herkimer, Jefferson, Lewis, Oneida, Oswego, St. Lawrence, Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Saratoga, Schenectady, Warren and Washington Counties, NY (*points in AR). Cameron, Clarion, Crawford, Elk, Erie, Forest, Jefferson, McKean, Mercer, Potter, Venango, Warren, Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Somerset, Washington and Westmoreland Counties, PA (*points in AR). Benton, Carroll, Decatur, Giles, Hardin, Henderson, Henry, Hickman, Houston, Humphreys, Lawrence, Lewis, Maury, Perry, Stewart, Wayne, and Weakley Counties, TN, (*points in AR). Andrews, Archer, Baylor, Blanco, Borden, Bosque, Brown, Burnet, Callahan, Clay, Coke, Coleman, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Eastland, Ector, Edwards, Erath, Fisher, Gaines, Garza, Gillespie, Glasscock, Hamilton, Haskell, Hill, Hood, Howard, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Llamo, Lubbock, Lynn, McCulloch, McLennan, Martin, Mason, Menard, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Parker, Reagan, Runnels, San Saba, Schleicher, Scurry, Schackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Upton, Val Verde, Wise, Yoakum, Young, Armstrong Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Dallam, Deaf Smith, Donley, Floyd, Foard, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita, Wilbarger, Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Ward, Winkler, Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt, and Wood Counties, TX (*points in AR). Points in VT (*Berne, IN). Brooke, Hancock, Marshall and Ohio Counties, WV (*points in AR). The purpose of this filing is to eliminate the gateways indicated by the asterisks above.

No. MC 107012 (Sub-No. E308), filed May 16, 1974. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representative: David D. Bishop and Gary M. Crist (same as above). *New Furniture, uncrated,* (1) From points in Butte, Lassen, Modoc, Nevada, Plumas, Shasta, Sierra, Siskiyou, and Yuba counties, CA, to points in Barnes, Cass, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent and Stutsman Counties, ND. (2) From points in Inyo, Fresno, Kings, Tulare, Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, San Bernardino, Alameda, Alpine, Amador, Calaveras, Colusa, Contra Costa, Eldorado, Madera, Marin, Mariposa, Merced, Mono, Monterey, Napa, Placer, San Benito, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tuolumne, Yolo, Imperial, Riverside, and San Diego Counties, CA, to points in ND. (3) From points in Glenn, Humboldt, Lake, Mendicino, Tehama, and Trinity Counties, CA, to points in Adams, Billings, Bowman, Burleigh, Dunn, Emmons, Golden Valley, Grant, Herttinger, Mercer, Morton, Oliver, Sioux, Slope, Stark, Barnes, Cass, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, Stutsman, Eddy, Foster, Grand Forks, Griggs, Nelson, Steele, Traill, Benson, Cavalier, Pembina, Pierce, Ramsey, Rolette, Sheridan, Towner, Walsh, Wells, Bottineau, Burke, McHenry, McLean, Mountrail, Renville, and Ward Counties, ND. The purpose of this filing is to eliminate the gateway of Laramie, WY.

No. MC 107012 (Sub-No. E309), filed May 16, 1974. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representative: David D. Bishop and Gary M. Crist (same as above). *New Furniture, uncrated,* (1) From points in Hartford, New London, Tolland, Windham, and Litchfield counties, CT, to points in AL; Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, and Washington Counties, FL; Bartow, Chattooga, Carroll, Catoosa, Dade, Douglas, Floyd, Gordon, Haralson, Heard, Murray, Paulding, Polk, Walker and Whitfield Counties, GA; Bedford, Bledsoe, Bradley, Coffee, Cumberland, Fentress, Franklin, Grundy, Hamilton, Lincoln, Loudon, McMinn, Marion, Marshall, Meigs, Monroe, Moore, Morgan, Polk, Rhea, Roane, Sequatchie, Van Buren, Warren, Chester, Crockett, Dyer, White, Fayette, Gibson, Hardeman,

Haywood, Lake, Lauderdale, McNairy, Madison, Obion, Shelby, Tipton, Cannon, Cheatham, Clay, Davidson, DeKalb, Dickson, Jackson, Macon, Montgomery, Overton, Pickett, Putnam, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, Wilson, Benton, Carroll, Decatur, Giles, Hardin, Henderson, Henry, Hickman, Houston, Humphreys, Lawrence, Lewis, Maury, Perry, Stewart, Wayne, and Weakley Counties, TN. (2) From points in Fairfield, Middlesex, and New Haven Counties, CT, to points in Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Coosa, Cullman, Elmore, Etowah, Jefferson, Lee, Randolph, St. Clair, Shelby, Talladega, Tallapoosa, Colbert, Fayette, Franklin, Lamar, Lauderdale, Lawrence, Marion, Pickens, Tuscaloosa, Walker, Winston, DeKalb, Jackson, Limestone, Madison, Marshall, Morgan, Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington, and Wilcox counties, AL; Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton and Washington Counties, FL; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madison, Obion, Shelby, Tipton, Cannon, Cheatham, Clay, Davidson, DeKalb, Dickson, Jackson, Macon, Montgomery, Overton, Pickett, Putnam, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, Wilson, Benton, Carroll, Decatur, Giles, Hardin, Henderson, Henry, Hickman, Houston, Humphreys, Lawrence, Lewis, Maury, Perry, Stewart, Wayne, and Weakley Counties, TN. The purpose of this filing is to eliminate the gateway of points in KY.

No. MC 107012 (Sub-No. E310), filed May 16, 1974. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representative: David D. Bishop and Gary M. Crist (same as above) *New Furniture, uncrated,* (1) From points in Kent County, DE, to points in FL; Atkinson, Baker, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Clay, Chattahoochee, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jones, Lamar, Lanier, Lee, Lowndes, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Muscogee, Peach, Pike, Pulaske, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Troup, Turner, Twiggs, Upson, Webster, Wilcox, Worth, Banks, Barrow, Butts, Cherokee, Clarke, Clayton, Cobb, Coweta, Dawson, DeKalb, Elbert, Fannin, Fayette, Forsyth, Franklin, Fulton, Gilmer, Gwinnett, Habersham, Hall, Hart, Henry, Jackson, Jasper, Lumpkin, Madison, Morgan, Newton, Oconee, Pickens, Rabun, Rockdale, Spalding, Stephens, Towns, Union, Walton, White, Baldwin, Burke, Columbia, Emanuel, Glascock, Greene, Hancock, Jefferson, Jenkins, Johnson, Laurens, Lincoln, McDuffie, Oglethorpe, Putnam, Richmond, Taliaferro, Treutlen, Warren, Washington, Wilkes, Wilkinson, Bartow, Chattooga, Carroll, Catoosa, Dade, Douglas, Floyd, Gordon, Haralson, Heard, Murray, Paulding, Polk, Walker and Whitfield Counties, GA; Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania and Yancey Counties, NC; Abbeville, Anderson, Greenville, Ocomee, Pickens, Cherokee, Chester, Edgefield, Greenwood, Lamens, McCormick, Newberry Saluda, Spartanburg, Union and York Counties, SC; Boone, Cabell, Lincoln, Logan, Mingo, Putnam, and Wayne Counties, WV. (2) From points in Sussex County, DE, to points in Charlotte, DeSota, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Okeechobee, Sarasota, Broward, Collier, Dade, Martin, Monroe, Palm Beach, Saint Lucie, Brevard, Citrus, Hernando, Hillsborough, Indian River, Lake, Orange, Osceola, Pasco, Pinellas, Polk, Seminole, Sumter, Volusia, Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, Washington, Columbia, Dixie, Franklin, Gadsen, Gilchrist, Hamilton, Jefferson, Lafayette, Leon, Liberty, Madison, Suwannee, Taylor and Wakulla Counties, FL; Atkinson, Baker, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jones, Lamar, Lanier, Lee, Lowndes, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Muscogee, Peach, Pike, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Troup, Turner, Twiggs, Upson, Webster, Wilcox, Worth, Banks, Barrow, Butts, Cherokee, Clarke, Clayton, Cobb, Coweta, Dawson, DeKalb, Elbert, Fannin, Fayette, Forsyth, Franklin, Fulton, Gilmer, Gwinnett, Habersham, Hall, Hart, Henry, Jackson, Jasper, Lumpkin, Madison, Morgan, Newton, Oconee, Pickens, Rabun, Rockdale, Spalding, Stephens, Towns, Union, Walton, White, Bartow, Chattooga, Carroll, Catoosa, Dade, Douglas, Floyd, Gordon, Haralson, Heard, Murray, Paulding, Polk, Walker and Whitfield Counties, GA; Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania and Yancey Counties, NC; Abbeville, Anderson, Greenville, Ocomee, Pickens, Cherokee, Chester, Edgefield, Greenwood, Lamens, McCormick, Newberry, Saluda, Spartanburg, Union and York Counties, SC; Boone, Cabell, Lincoln, Logan, Mingo, Putnam, and Wayne Counties, WV. (3) From points in New Castle County, DE, to points in FL; Atkinson, Baker, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jones, Lamar, Lanier, Lee, Lowndes, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Muscogee, Peach, Pike, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Troup, Turner, Twiggs, Upson, Webster, Wilcox, Worth, Banks, Barrow, Butts, Cherokee, Clarke, Clayton, Cobb, Coweta, Dawson, DeKalb, Elbert, Fannin, Fayette, Forsyth, Franklin, Fulton, Gilmer, Gwinnett, Habersham, Hall, Hart, Henry, Jackson, Jasper, Lumpkin, Madison, Morgan, Newton, Oconee, Pickens, Rabun, Rockdale, Spalding, Stephens, Towns, Union, Walton, White, Baldwin, Burke, Columbia, Emanuel, Glascock, Greene, Hancock, Jefferson, Jenkins, Johnson, Laurens, Lincoln, McDuffie, Oglethorpe, Putnam, Richmond, Taliaferro, Treutlen, Warren, Washington, Wilkes, Wilkinson, Appling, Bacon, Brantley, Camden, Charlton, Glynn, Jeff Davis, Long, McIntosh, Montgomery, Pierce, Tattnall, Toombs Ware, Wayne, Wheeler, Bartow, Chattooga, Carroll, Catoosa, Dade, Douglas, Floyd, Gordon, Haralson, Heard, Murray, Paulding, Polk, Walker and Whitfield Counties, GA; Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania and Yancey Counties, NC; Abbeville, Anderson, Greenville, Ocomee, Pickens, Cherokee, Chester, Edgefield, Greenwood, Lamens, McCormick, Newberry, Saluda, Spartanburg, Union and York Counties, SC; Boone, Cabell, Lincoln, Logan, Mingo, Putnam, and Wayne Counties, WV. The purpose of this filing is to eliminate the gateway of ponts in TN (except points in Hamblen County, TN).

No. MC 107012 (Sub-No. E311), filed May 16, 1974. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representative: David D. Bishop and Gary M. Crist (same as above). *New Furniture, uncrated:* From points in DC, to points in FL; Atkinson, Baker, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge,

Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jones, Lamar, Lanier, Lee, Lowndes, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Muscogee, Peach, Pike, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Troup, Turner, Twiggs, Upson, Webster, Wilcox, Worth, Banks, Barrows, Butts, Cherokee, Clarke, Clayton, Cobb, Coweta, Dawson, De Kalb, Elbert, Fannin, Fayette, Forsyth, Franklin, Fulton, Gilmer, Gwinnett, Habersham, Hall, Hart, Henry, Jackson, Jasper, Lumpkin, Madison, Morgan, Newton, Oconee, Pickens, Rabun, Rockdale, Spalding, Stephens, Towns, Union, Walton, White, Baldwin, Burke, Columbia, Emanuel, Glascock, Greene, Hancock, Jefferson, Jenkins, Johnson, Laurens, Lincoln, McDuffie, Oglethorpe, Putnam, Richmond, Taliaferro, Treutlen, Warren,, Washington, Wilkes, Wilkinson, Appling, Bacon, Brantley, Camden, Charlton, Glynn, Jeff Davis, Long, McIntosh, Montgomery, Pierce, Tattnall, Toombs, Ware, Wayne, Wheeler, Bartow, Chattooga, Carroll, Catoosa, Dade, Douglas, Floyd, Gordon, Haralson, Heard, Murray, Paulding, Polk, Walker and Whitfield Counties, GA; Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania and Yancey Counties, NC; Abbeville, Anderson, Greenville, Ocomee, Pickens, Cherokee, Chester, Edgefield, Greenwood, Lamens, McCormick, Newberry, Saluda, Spartanburg, Union, and York Counties, SC. The purpose of this filing is to eliminate the gateway of points TN (except points in Hamblen County, TN).

No. MC 107515 (Sub-No. E249), filed May 29, 1974. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Applicant's representative: Bruce E. Mitchell, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Canned meats, canned meat products, and canned meat pyproducts* (except hides) from the plantsite of Armour & Co., near Sterling, IL, to Houston and San Antonio, TX, and their commercial zones and that protion of TX on, east, and south of a line extending from the TX-Mexico border at Laredo, TX, on Interstate Hwy 35 to San Antonio, TX, then on Interstate Hwy 10 to the TX-LA State line. Restriction: The authority granted herein may not be tacked with any other authority held by carrier so as to perform a through service via the point of origin near Sterling, IL. The purpose of this filing is to eliminate the gateway of Lewisburg, TN.

No. MC 107515 (Sub-No. E253), filed May 29, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Applicant's representative: Bruce E. Mitchell, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Meats, meat products, and meat byproducts* as described in section A of Appendix 1 to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except commodities in bulk, in tank vehicles and hides); from the plantsite of Armour & Co., near Sterling, IL, to that portion of VA on, south, and east of a line extending from the NC-VA State line on Interstate Hwy 81 to its junction with U.S. Hwy 460, then on U.S. Hwy 460 to its junction with U.S. Hwy 360 to Richmond, VA, and its commercial zone, thence on U.S. Hwy 60 to Norfolk, VA, and its commercial zone and the Atlantic Ocean. Restrictions: (1) The authority granted herein may not be tacked with any other authority held by carrier so as to perform a through service via the points of origin near Sterling, IL. (2) The operations authorized herein are restricted against the transportation of traffic originating at Nashville, TN. The purpose of this filing is to eliminate the gateway of Madison, TN.

No. MC 107515 (Sub-No. E513), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Meats, meat products, meat byproducts,* as described in section A of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 272 and 766 from Arkansas City, KS, to points in VA on and east of U.S. Hwy 1. The purpose of this filing is to elimiate the gateway of Atlanta, GA.

No. MC 107515 (Sub-No. E515), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. (1) *Meats, meat products, meat byproducts* (except canned goods) as defined in section A of Appendix 1 to the report in Descriptions in Motor Carrier Certificates, 61 MCC 766, and frozen foods, from Houston, TX, to OH and that portion of MI on and east of a line beginning at the IN/MI State line on MI Hwy 66 to junction MI Hwy 115, then along MI Hwy 115 to junction MI Hwy 37 then along MI Hwy 37 to Lake MI at or near Traverse City, MI; (2) *meats, meat products, and meat byproducts* as described in Appendix I to the report in Descriptions in Motor Carrier Certificates, 61MCC 209 and 766, from Galveston, TX, and the plantsite of Armour & Co., located 7 miles north of Houston, TX, to the territory in (1) above; and (3) *frozen foods, meats, meat products, and meat byproducts,* as described in Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, from San Antonio, TX, to that portion of OH on and east of a line beginning at the WV-OH State line on Interstate Hwy 77 to junction OH Hwy 21, then along OH Hwy 21 to Lake Erie at or near Cleveland, OH. The purpose of this filing is to eliminate the gateways of Atlanta, GA, and Louisville, KY.

No. MC 107515 (Sub-No. E527), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Unfrozen fresh and cured meats,* (1) from Los Angeles, CA, to VA, NC, SC, WVA, MD, DC, PA, NY, NJ, DE, CT, RI, MA, VT NH, ME, points in KY, on or east of U.S. Hwy 31W, and points in OH, on, south, or east of Interstate Hwy 71; and (2) from San Jose and San Francisco, CA, to VA, NC, SC, WVA, MD, NJ, DE, CT, RI, MA, VT, NH, ME, points in PA on or east of Interstate Hwy 81, and points in NY, on, east, or south of a line beginning at the NY/PA State line and extending over Interstate Hwy 81 to junction NY Hwy 12, then over NY Hwy 12 to junction NY Hwy 28, then over NY Hwy 28 to NY Hwy 30, then over NY Hwy 30 to junction NY Hwy 3, then over NY Hwy 3 to junction Interstate Hwy 87, then over Interstate Hwy 87 to the United States/Canadian Border. The purpose of this filing is to eliminate the gateways of Atlanta, GA; Atlanta, GA, and Louisville, KY; Atlanta, GA, and Gatesville, NC.

No. MC 107515 (Sub-No. E546), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Frozen foods* (1) from points in that portion of TX on or east of a line beginning at the OK-TX State line and extending along U.S. Hwy 271 to junction U.S. Hwy 69, then over U.S. Hwy 69 to junction U.S. Hwy 79, then over U.S. Hwy 79 to junction TX Hwy 19, then over TX Hwy 19 to Interstate Hwy 45, then over Interstate Hwy 45 to junction TX Hwy 288, then over U.S. Hwy 288 to the Gulf of Mexico at Freeport, TX, to Blaine, WA, (2) from Houston, TX, to points in that part of WA, on or north of a line beginning at Simlik Beach and extending along WA Hwy 536 to junction WA Hwy 20, then over WA Hwy 20 to junction Interstate Hwy 5 then over 155 to junction U.S. Hwy 2 then over U.S. Hwy 2 to the ID-WA State line; points in ID on or

north of Interstate Hwy 90; and points in MT on, north or west of a line beginning at the ID-MT State line and extending along U.S. Hwy 12 to junction U.S. Hwy 93, then over U.S. Hwy 93 to junction U.S. Hwy 2, then over U.S. Hwy 2 to junction U.S. Hwy 89, then over U.S. Hwy 89 to U.S. Hwy-Canadian border (3) from Beaumont, TX, to (a) points in that portion of OR on or west of U.S. Hwy 395 (b) points in that portion of OR on or north of U.S. Hwy 20 (c) all points in WA (d) points in ID on, north, or west of a line beginning at the OR-ID State line and extending along ID Hwy 52 to junction ID Hwy 55, then over ID Hwy 55 to junction U.S. Hwy 95, then over U.S. Hwy 95 to junction U.S. Hwy 12, then over U.S. Hwy 12 to the MT-ID State line; and (3) to all points in MT (4) from Galveston, TX, to (a) points in WA (except Franklin, Benton, Klickitat, Skamania, Clark and Cowlitz, Counties); (b) points in ID on or north of U.S. Hwy 12; (c) points in MT on or north of a line beginning at the ID-MT State line and extending along U.S. Hwy 12 to junction MT Hwy 200 to junction U.S. Hwy 89, then over U.S. Hwy 89 to junction Interstate Hwy 15, then over Interstate Hwy 15 to U.S. Hwy Canadian boundary (5) from points in that part of TX on, south or east of a line beginning at the AR-TX State line and extending along U.S. Hwy 59 to junction U.S. Hwy 80, then over U.S. Hwy 80 to junction U.S. Hwy 259, then over U.S. Hwy 259 to junction U.S. Hwy 59, then over U.S. Hwy 59 to junction U.S. Hwy 69, then over U.S. Hwy 69 to Port Arthur, TX, to Portland and Milwaukee, OR; that part of OR on, north or west of a line beginning at Newport and extending along U.S. Hwy 20 to Interstate Hwy 5, then over Interstate Hwy 5 to WA-OR border that portion of WA on, north or west of a line beginning at WA-OR State line and extending along Interstate Hwy 5 to junction U.S. Hwy 12, then over U.S. Hwy 12 to junction U.S. Hwy 97, then over U.S. Hwy 97 to junction Interstate Hwy 90, then over Interstate Hwy 90 to the ID-WA State line; points in ID on, or north of Interstate Hwy 90; and points in MT as described in 4(c) above. (6) From Texarkana, TX, to OR, WA; to that portion of ID on, north or west of a line beginning at the ID-OR State line and extending along U.S. Hwy 95 to junction ID Hwy 55, then over ID Hwy 55 to junction Interstate Hwy 80N, then over Interstate Hwy 80N to ID Hwy 68, then over ID Hwy 68 to junction U.S. Hwy 93, then over U.S. Hwy 93 to the ID-MT State line and to all points in MT. Restriction: Said operations are restricted against the transportation of (1) frozen fruits, berries, and vegetables, and (2) canned foodstuffs originating at Houston, TX, and points in its commercial zone as defined by the Commission, destined to points in AL, NC, SC, Jacksonville and points in Escambia and Santa Rosa Counties, FL, and Atlanta, GA, and points in its commercial zone as defined by the Commission. (3) meats, meat and meat byproducts as defined by the Commission and (4) commodities in bulk, in vehicles equipped with mechanical refrigeration. The purpose of this filing is to eliminate the gateways of Woodstock, TN and Gilestown, TN.

No. MC 107515 (E569), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Fresh and cured meat* (1) from Atlanta, GA, and points within 10 miles of Atlanta and Griffin, GA and points within 5 miles of Griffin, GA, to CA, WA and OR; (2) from Albany, GA. and points within 5 miles of Albany, GA, to WA, OR and that part of CA on and north of a line beginning at the NV-CA State line on Interstate Hwy 15 to junction CA Hwy 138, then along CA Hwy 13 to junction Interstate Hwy 5, then along Interstate Hwy 5 to junction CA Hwy 126, then along CA Hwy 126 to the Pacific Ocean at or near Ventura, CA; (3) from Columbus, GA, to OR, WA, and that portion of CA on and north of a line beginning at the CA-NV State line on CA Hwy 168 to junction U.S. Hwy 395, then along U.S. Hwy 395 to junction CA Hwy 178, then along CA Hwy 178 to junction CA Hwy 155, then along CA Hwy 155 to junction CA Hwy 99, then along CA Hwy 99 to junction CA Hwy 198, then along CA Hwy 198 to junction CA Hwy 41, then along CA Hwy 41 to the Pacific Ocean; and (4) from Macon, GA, and points within 5 mines of Macon, GA, Montezuma, GA, and points within 5 miles of Montezuma, GA, to OR, WA, and points in CA on and north of a line beginning at the NV-CA State line on Interstate Hwy 40 to junction Interstate Hwy 15, then along Interstate Hwy 15, to junction U.S. Hwy 395, then along U.S. Hwy 395 to junction Interstate Hwy 10, then along Interstate Hwy 10 to the Pacific Ocean at or near Santa Monica, CA. The purpose of this filing is to eliminate the gateway of Bristol, TN.

No. MC 107515 (Sub-No. E572), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Frozen foods,* in vehicles equipped with mechanical refrigeration (a) from that portion of IN, on, north, or east of a line beginning at the OH-IN State line and extending along U.S. Hwy 35 to its junction with IN Hwy 3, then over IN Hwy 3 to its junction with IN Hwy 124, then over IN Hwy 124 to its junction with IN Hwy 5, then over IN Hwy 5 to its junction with U.S. Hwy 33, then over U.S. Hwy 33 to its junction with IN Hwy 19, then over IN Hwy 19 south to the IN-MI State line to points in CA on, south or west of a line beginning at San Francisco and extending along Interstate Hwy 80 to junction CA Hwy 17, then over CA Hwy 17 to its junction with Interstate Hwy 580, then over Interstate Hwy 580 to its junction with Interstate Hwy 5 at Tracy, CA, then over Interstate Hwy 5 to the United States-Mexican boundary line; and (b) from points in IN on, north, or east of U.S. Hwy 33 to points in that portion of AZ on or west of a line beginning at the United States-Mexican border at Nogales and extending along U.S. Hwy 89 to U.S. Hwy 93, then over U.S. Hwy 93 to its junction with Interstate Hwy 40, then over Interstate Hwy 40 to the AZ-CA border and to points in that portion of CA on, south, or west of a line beginning at the CA-AZ State line at Needles and extending along U.S. Hwy 66 to its junction with CA Hwy 58, then over CA Hwy 58 to its junction with CA Hwy 99, then over CA Hwy 99 to its junction with CA Hwy 132, then over CA Hwy 132 to its junction with Interstate Hwy 580, then over Interstate Hwy 580 to its junction with Interstate Hwy 80, then over Interstate Hwy 80 to San Francisco. The purpose of this filing is to eliminate the gateways of Detroit, MI, and Columbus, OH.

No. MC 107515 (Sub-No. E584), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, Ga 30050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Road NE., Atlanta, Ga 30326. *Frozen foods,* in vehicles equipped with mechanical refrigeration: (1) From points in CA to VA, MA, CO, NJ, DE, DC, points in that part of PA on or east of a line beginning at the MD-PA State line and extending along U.S. Hwy 220 to its junction with U.S. Hwy 15, then along U.S. Hwy 15 to the NY-PA State line and points in their commercial zones, and points in that part of NY on or east of a line beginning at the United States-Canadian boundary and extending along NY Hwy 30 to its junction with NY Hwy 28, then over NY Hwy 28 to its junction with Interstate Hwy 90, then over Interstate Hwy 90 to its junction with Interstate Hwy 81, then over Interstate Hwy 81 to its junction with NY Hwy 13, then over NY Hwy 13 to its junction with NY Hwy 14, then over NY Hwy 14 to the NY-PA State line; (2) from points in CA on, south, or west of a line beginning at the international boundary line of the United States and Mexico and extending along CA Hwy 86 to its

junction with Interstate Hwy 10, then over Interstate Hwy 10 to its junction with Interstate Hwy 5, then over Interstate Hwy 5 to its junction with California Hwy 152, then over CA Hwy 152 to its junction with CA Hwy 1 then over CA Hwy 1 to the Pacific Ocean at Santa Cruz, CA, to NY; (3) from points in that part of CA on, south, or west of a line beginning at the international boundary line and the United States and Mexico and extending along CA Hwy 86 to its junction with Interstate Hwy 10, then over Interstate Hwy 10 to its junction with Interstate Hwy 5, then over Interstate Hwy 5 to its junction with Interstate Hwy 580, then over Interstate Hwy 580 to its junction with CA Hwy 17, then over CA Hwy 17 to CA Hwy 92, then over CA Hwy 92 to its junction with CA Hwy 1, then over CA Hwy 1 to the Pacific Ocean near El Granada, CA, and points in their commercial zones, to points in PA; and (4) from San Francisco and San Bruno, CA, to points in PA. In 1 through 4 above with no transportation for compensation on return except as otherwise authorized. The purpose of this filing is to eliminate the gateway of Rocky Mount, NC.

No. MC 107515 (Sub-No. E585), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Frozen foods,* in vehicles equipped with mechanical refrigeration: (1) From points in OH to points in San Diego, Orange, Los Angeles, Ventura, and Santa Barbara Counties, CA, (2) from points in OH and Richmond, IN, to Carson City, NV, and points in CA on or west of U.S. Hwy 395, (3) from points in OH to all points in WA and to those points in OR on or west of U.S. Hwy 395 and to points in ID on or west of U.S. Hwy 95, and (4) from points in that portion of OH on or east of a line beginning at the OH River and extending along U.S. Hwy 23 to its junction with U.S. Hwy 50, then over U.S. Hwy 50 to junction OH Hwy 28, then over OH Hwy 28 to junction OH Hwy 72, then over OH Hwy 72 to its junction with U.S. Hwy 68, then over U.S. Hwy 68 to its junction with Interstate Hwy 75, then over Interstate Hwy 75 to the OH-MI State line to points in OR and ID. The purpose of this filing is to eliminate the gateways of Detroit, MI, and Columbus, OH.

No. MC 107515 (Sub-No. E586), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Frozen foods,* in vehicles equipped with mechanical refrigeration: (1) From points in that part of OH on, north, or east of a line beginning at the OH-IN State boundary line and extending along U.S. Hwy 30 to its junction with U.S. Hwy 30S, then over U.S. Hwy 30S to its junction with U.S. Hwy 23, then over U.S. Hwy 23 to its junction with U.S. Hwy 35, then over U.S. Hwy 35 to the OH-WV State boundary line to points in AZ; and (2) from points in that part of OH on, north, or east of a line beginning at the OH River and extending along OH Hwy 247 to its junction with U.S. Hwy 62, then over U.S. Hwy 62 to its junction with OH Hwy 72, then over OH Hwy 72 to its junction with U.S. Hwy 68, then over U.S. Hwy 68 to its junction with U.S. Hwy 33, then over U.S. Hwy 33 to the IN-OH State line to points in AZ, on, west, and south of a line beginning at the United States/Mexican border at or near Nogales and extending along U.S. Hwy 89 to its junction with U.S. Hwy 60, then over U.S. Hwy 60 to the AZ/CA State line. The purpose of this filing is to eliminate the gateway of Detroit, MI, and Columbus, OH.

No. MC 107515 (Sub-No. E587), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Frozen foods,* in vehicles equipped with mechanical refrigeration: (1) From points in that part of OH on, north, or east of a line beginning at the OH-KY State line and extending along U.S. Hwy 68 to junction U.S. Hwy 35, then over U.S. Hwy 35 to Dayton, then over OH Hwy 49 to Greenville, then over OH Hwy 571 to the OH-IN State line near Union City to Las Vegas, NV, (2) from all points in OH to Storey, Douglas, and Lyon Counties, NV. The purpose of this filing is to eliminate the gateways of Detroit, MI, and Columbus, OH.

No. MC 107515 (Sub-No. E594), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Frozen foods,* in vehicles equipped with mechanical refrigeration: (1) From NC and SC, to AZ, CA, CO, MT, NV, NM, OR, UT, WA and WY, (2) from GA, to CO, ID, MT, NV, OR, UT, WA, and WY. The purpose of this filing is to eliminate the gateway of the State of TN (except Memphis and its commercial zone), (3) frozen foods (except frozen citrus products to CO, ID, MT, and WY), (a) from FL, to ID, MT, OR, UT, WA, WY, that portion of CO on and north of a line beginning at the CO-KS State line on U.S. Hwy 24 to junction U.S. Hwy 50, then along U.S. Hwy 50 to the CO-UT State line and that portion of NV on and south of U.S. Hwy 50, (b) from that portion of FL on and east of U.S. Hwy 319, to NV and CO. The purpose of this filing is to eliminate the gateways of Doraville, GA, and Dyersburg, TN.

No. MC 107515 (Sub-No. E623), filed February 13, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: Alan E. Serby, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Meats, meat products, and meat byproducts* (except in bulk) as described in section A of appendix 1, to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209, in vehicles equipped with mechanical refrigeration: (1) From points in that part of VA commencing at the VA-WV State line over U.S. Hwy 250 to junction Interstate Hwy 64, then over Interstate Hwy 64 to junction VA Hwy 33, then over Hwy 33 to Chesapeake Bay at or near Bushy, VA, and points in VA on the DE-MD-VA Peninsula, to points in IL; (2) from points in VA to points in IL on or south of a line commencing at the IL-IN Hwy State line and extending over U.S. Hwy 50 to junction IL Hwy 127, then over IL Hwy 127 to junction IL Hwy 16, then over IL Hwy 16 to junction IL Hwy 267, then over IL Hwy 267 to junction IL Hwy 106, then over IL Hwy 106 to junction U.S. Hwy 36, then over U.S. Hwy 36 to junction U.S. Hwy 54, then over U.S. Hwy 54 to IL-MO State line at or near Pike, IL. Restrictions: (1) All authority sought herein is restricted to the transportation of shipments which originate at or are destined to points in NY, CO, MA, RI, NJ, PA, MD, DE, VA, DC, KY, NC, SC, TN, GA, AL, FL, MS, AR, LA, OK, TX, AZ, CA, and NM. (2) All of the authority herein shall expire on December 18, 1978, unless on or prior to that date the Commission shall renew the certificate issued to carrier in MC 107515 (Sub-No. 799). The purpose of this filing is to eliminate the gateway of Bristol, VA.

No. MC 107515 (Sub-No. E624), filed February 13, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: Alan E. Serby, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. (1) *Frozen fruits and vegetables:* From points in VA, DE, NJ, CT, RI, and DC; that protion of MA on or east of Interstate Hwy 91, New York City, NY, points in PA on, south, or east of U.S. Hwy 1, points in MD on or east of U.S. Hwy 15 to points in MO on, south, or west of a line commencing at the IL-MO State line and extending over Interstate Hwy 270 to junction Interstate Hwy 70, then over Interstate

Hwy 70 to junction U.S. Hwy 65, then over U.S. Hwy 65 to junction U.S. Hwy 36, then over U.S. Hwy 36 to the MO-KS State line; (2) *salads and sandwich spreads* from points in the origin territory in (1) above to all points in KS and that portion of IL on and south of U.S. Hwy 460; (3) *salads and sandwich spreads* from points in VA on or south of a line commencing at the VA-WV State line and extending over U.S. Hwy 460 to junction U.S. Hwy 360, then over U.S. Hwy 360 to junction VA Hwy 33, then over VA Hwy 33 to the Chesapeake Bay at or near Locust Hill, VA, to points in ND, SD, IA and points in IN on or south or west of a line beginning at the KY-IN State line and extending over U.S. Hwy 150 to junction IN Hwy 37, then over IN Hwy 37 to junction IN Hwy 46, then over IN Hwy 46 to junction U.S. Hwy 231, then over U.S. Hwy 231 to junction U.S. Hwy 136, then over U.S. Hwy 136 to junction U.S. Hwy 41 then over U.S. Hwy 41 to junction U.S. Hwy 24, then over U.S. Hwy 24 to the IL-IN State line; points in IL on, south, or west of a line commencing at the IL-IN State line and extending over U.S. Hwy 24 to junction IL Hwy 47, then over IL Hwy 47 to junction U.S. Hwy 34, then over U.S. Hwy 34 to junction U.S. Hwy 51, then over U.S. Hwy 51 to IL-WI State line; and points in WI on, north, or west of a line commencing at the WI-IL State line and extending over U.S. Hwy 51 to junction WI Hwy 59, then over WI Hwy 59 to junction U.S. Hwy 18, then over U.S. Hwy 18 to Milwaukee and Lake MI; (4) *frozen fruits and vegetables* from points in the territory described in (3) above to points in MO, MN, NE, and that portion of WI specified in (3) above. Restrictions: (1) All authority sought herein is to be restricted to transportation in vehicles equipped with mechanical refrigeration. (2) All authority sought herein is to exclude commodities in bulk. (3) All authority sought herein is restricted to the transportation of shipments which originate at or are destined to points in NY, CT, MA, RI, NJ, PA, MD, DE, VA, DC, KY, NC, SC, TN, GA, AL, FL, MS, AR, LA, OK, TX, AZ, CA, and NM. (4) All of the authority herein shall expire on December 18, 1978, unless on or prior to that date the Commission shall renew the Certificate issued to carrier in MC 107515 (Sub-No. 799). The purpose of this filing is to eliminate the gateway of Knoxville, TN.

No. MC 107515 (Sub-No. E625), filed February 13, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: Alan E. Serby, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Cheese* (except in bulk) in vehicles equipped with mechanical refrigeration, from points in VA, MD, DE, NJ, NY, PA, MA, RI, and DC to points in CA, OR, and WA. Restrictions: (1) All authority sought herein is restricted to the transportation of shipments which originate at or are destined to points in NY, CT, MA, RI, NJ, PA, MD, DE, VA, DC, KY, NC, SC, TN, GA, AL, FL, MS, AR, LA, OK, TX, AZ, CA, and NM. (2) All of the authority herein shall expire on December 18, 1978, unless on or prior to that date the Commission shall renew the Certificate issued to carrier in MC 107515 (Sub-No. 799). The purpose of this filing is to eliminate the gateways of Nashville, TN, or Lousiville, KY.

No. MC 107515 (Sub-No. E626), filed February 13, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: Alan E. Serby, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Frozen foods* (except in bulk) in vehicles equipped with mechanical refrigeration, from Suffolk, VA, to points in MI. Restrictions: (1) All authority sought herein is restricted to the transportation of shipments which originate at or are destined to points in NY, CT, MA, RI, NJ, PA, MD, DE, VA, DC, KY, NC, SC, TN, GA, AL, FL, MS, AR, LA, OK, TX, AZ, CA, and NM. (2) All of the authority herein shall expire on December 18, 1978, unless on or prior to that date the Commission shall renew the Certificate issued to carrier in MC 107515 (Sub-No. 799). The purpose of this filing is to eliminate the gateway of Rocky Mount, NC.

No. MC 107515 (Sub-No. E627), filed February 13, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: Alan E. Selby, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Frozen foods,* (except in bulk) in vehicles equipped with mechanical refrigeration, from Suffolk, VA, to points in Erie and Niagara Counties, NY. Restrictions: (1) All authority sought herein is restricted to the transportation of shipments which originate at or are destined to points in NY, CT, MA, RI, NJ, PA, MD, DE, VA, DC, KY, NC, SC, TN, GA, AL, FL, MS, AR, LA, OK, TX, AZ, CA, and NM. (2) All of the authority herein shall expire on December 18, 1978, unless or prior to that date the Commission shall renew the Certificate issued to carrier in MC 107515 (Sub-No. 799). The purpose of this filing is to eliminate the gateway of Rocky Mount, NC.

No. MC 107515 (Sub-No. E628), filed February 13, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: Alan E. Selby, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. *Frozen foods,* (except in bulk) in vehicles equipped with mechanical refrigeration from Bristol, VA, to points in MA and points in CT on, north, or east of a line commencing at the NY-CT State line and extending over Interstate Hwy 84 to junction CT Hwy 34, then over CT Hwy 34 to New Haven, CT, and points in NY on, north, or east of a line beginning at the NY/CT State line and extending over NY Hwy 35 to junction U.S. Hwy 9, then over U.S. Hwy 9 to junction NY Hwy 73, then over NY Hwy 73 to junction NY Hwy 3, then over NY Hwy 3 to junction NY Hwy 30, then over NY Hwy 30 to the international boundary line at or near Trout River, NY. Restrictions: (1) All authority sought herein is restricted to the transportation of shipments which originate at or are destined to points in NY, CT, MA, RI, NJ, PA, MD, DE, VA, DC, KY, NC, SC, TN, GA, AL, FL, MS, AR, LA, OK, TX, AZ, CA, and NM. (2) All of the authority herein shall expire on December 18, 1978, unless on or prior to that date the Commission shall renew the Certificate issued to carrier in MC 107515 (Sub-No. 799). The purpose of this filing is to eliminate the gateway of Rocky Mount, NC.

No. MC 107515 (Sub-No. E629), filed February 13, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: Alan E. Serby, Suite 375, 3379 Peachtree Road. NE., Atlanta, GA 30326. *Frozen foods* (except in bulk), in vehicles equipped with mechanical refrigeration from Suffolk, VA, to points in that part of OH on, north and west of a line commencing at the OH-KY State line and extending over U.S. Hwy 23 to its junction with OH Hwy 124, then over OH Hwy 124 to its junction with OH Hwy 93, then over OH Hwy 93 to its junction with U.S. Hwy 33, then over U.S. Highway 33 to its junction with OH Hwy 37, then over OH Hwy 37 to its junction with Interstate Hwy 70, then over Interstate Hwy 70 to its junction with OH Hwy 13, then over Hwy 13 to its junction with OH Hwy 3, then over OH Hwy 3 to its junction with U.S. Hwy 42 at or near Parma, OH, then over U.S. Hwy 42 to Cleveland, OH. Restrictions: (1) Restricted to the transportation of shipments which originate at or are destined to points in NY, CT, NA, RI, NJ, PA, MD, DE, VA, DC, KY, NC, SC, TN, GA, AL, FL, MS, AR, LA, OK, TX, AZ, CA, and NM. (2) All of the authority herein shall expire on December 18, 1978, unless on or prior to that date the Commission shall renew the Certificate issued to carrier in MC 107515 (Sub-No. 799). The purpose of this filing is to eliminate the gateway of Rocky Mount, NC.

No. MC 107515 (Sub-No. E630), filed February 13, 1976. Applicant: RE-

FRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: Alan E. Serby, Suite 375, 3379 Peachtree Road NE, Atlanta, GA 30326. *Fresh fruits and vegetables,* in packages, and *unfrozen meats and meat products* (except in bulk), in vehicles equipped with mechanical refrigeration from Suffolk, VA, to Washington, DC, Baltimore, MD, and points in PA, NJ, NY, CT, RI, MA, ME, NH, and VT. Restrictions: (1) Restricted against joinder or tacking for the purpose of performing through service from Columbus, OH, Cudahy and Madison, WI, Kansas City, KS-MO, St. Joseph and St. Louis, MO, East St. Louis, Sterling, Momence, and Rochelle, IL, Covington, KY, West Point, NE, and points in IA and MN to points in MD, VA, and the DC. (2) Restricted to the transportation of shipments which originate at or are destined to points in NY, CT, MA, RI, NJ, PA, MD, DE, VA, DC, KY, NC, SC, TN, GA, AL, FL, MS, AR, LA, OK, TX, AZ, CA, and NM. (3) All of the authority herein shall expire on December 18, 1978, unless on or prior to that date the Commission shall renew the certificate issued to carrier in MC 107515 (Sub-No. 799). The purpose of this filing is to eliminate the gateway of Gatesville, NC.

No. MC 107515 (Sub-No. E631), filed February 13, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: Alan E. Serby, Suite 375, 3379 Peachtree Road, NE, Atlanta, GA 30326. *Frozen foods* (except sugar and commodities in bulk), in vehicles equipped with mechanical refrigeration (1) from NY, CT, RI, MA, PA, DE, MD, NJ, VA, and the DC, to all points in CA, NV, AZ, UT, OR, ID, WA, NM, and points in that portion of CO on, south, or west of a line beginning at the CO-KS State line and extending over U.S. Hwy 36 to its junction with CO Hwy 71, then over CO Hwy 71 to its junction with U.S. Hwy 34, then over U.S. Hwy 34 to its junction with U.S. Hwy 40, then over U.S. Hwy 40 to the CO-UT State line; (2) from points in VA, DE, MD, NJ, CT, RI, MA, Washington, DC, and that portion of PA on or east of a line commencing at the WV-PA State line and extending over U.S. Hwy 22 to its junction with U.S. Hwy 119, then over U.S. Hwy 119 to its junction with PA Hwy 255, then over PA Hwy 255 to its junction with PA Hwy 555, then over PA Hwy 555 to its junction with PA Hwy 120, then over PA Hwy 120 to its junction with PA Hwy 872, then over PA Hwy 872 to its junction with U.S. Hwy 6, then over U.S. Hwy 6 to PA Hwy 449, then over PA Hwy 449 to the NY-PA State line; that portion of NY on or east of a line beginning at the NY-PA State line and extending over NY Hwy 19 to its junction with NY Hwy 17, then over NY Hwy 17 to its junction with NY Hwy 21, then over NY Hwy 21 to its junction with NY Hwy 15, then over U.S. Hwy 15 to Rochester, NY, then over NY Hwy 18 to Lake Ontario at or near Sea Breeze, NY, to points in CO, points in WY on, south or west of U.S. Hwy 287, points in MT, on or west of a line commencing at the WY-MT State line and extending over U.S. Hwy 191 to its junction with U.S. Hwy 10, then over U.S. Hwy 10 to its junction with U.S. Hwy 93, then over U.S. Hwy 93 to the international border line at or near Eureka, MT; and (3) from DE, NJ, CT, RI, MA, VA, and the DC; that portion of PA on, south or east of a line commencing at the MD-PA State line and extending over interstate Hwy 81 to its junction with Interstate Hwy 78, then over Interstate Hwy 78 to the PA-NJ State line; and points in MD on, south or east of Interstate Hwy 81; and points in NY on or south of Interstate Hwy 84, to points in WY and points in MT on or west of U.S. Hwy 89. Restrictions: (1) All authority sought herein is restricted to the transportation of shipments which originate at or are destined to points in NY, CT, MA, RI, NJ, PA, MD, DE, VA, DC, KY, NC, SC, TN, GA, AL, FL, MS, AR, LA, OK, TX, AZ, CA, and NM. (2) All of the authority herein shall expire on December 18, 1978, unless on or prior to that date the Commission shall renew the Certificate issued to carrier in MC 107515 (Sub-No. 799). The purpose of this filing is to eliminate the gateway of the State of TN (except Memphis and points in its commercial zone).

No. MC 115331 (Sub-No. E24) (correction), filed May 16, 1974, published in the FEDERAL REGISTER issue of May 5, 1976, and partially republished, as corrected, this issue. Applicant: TRUCK TRANSPORT INC., 230 Saint Clair Avenue, East St. Louis, IL 62201. Applicant's representative: E. Stephen Heisley, 666 Eleventh St. NW., Washington, D.C. 20001. (46) *Dry Fertilizer,* in bulk, from Cairo, IL, to points in IA. The purpose of this filing is to eliminate the gateway of Selma, Mo.

NOTE.—The purpose of this partial republication is to correct the commodity description. The remainder of this letter-notice remains as previously published.

No. MC 116014 (Sub-No. E21), filed June 15, 1975. Applicant: OLIVER TRUCKING COMPANY, INC., P.O. Box 53, Winchester, KY 40391. Applicant's representative: Louis J. Amato, P.O. Box E, Bowling Green, KY 42101. *Lumber,* from points in KY on and east of a line beginning at the WV-KY State line, then along U.S. Hwy 23 to junction KY Hwy 80, then along KY Hwy 80 to junction U.S. Hwy 25W, then along U.S. Hwy 25W to KY-TN State line, to points in WV on and east of a line beginning at the OH-WV State line, then along Interstate Hwy 77 to the WV-VA State line. The purpose of this filing is to eliminate the gateways of points in Powell County, KY, and points in KY on and east of U.S. Hwy 31E.

No. MC 116014 (Sub-No. E23), filed June 15, 1975. Applicant: OLIVER TRUCKING CO. INC., P.O. Box 53, Winchester, KY 40391. Applicant's representative: Louis J. Amato, P.O. Box E, Bowling Green, KY 42101. *Lumber,* from those points in KY on and east of U.S. Hwy 31E to points in ME, VT, NH, MA, CT, RI, NY, PA, NJ, DE, MD, OH, IN, MI, WI, IL, MN, IA, and those points in MO on and north of a line beginning at the IL-MO State line, and extending along U.S. Hwy 66 to the MO-KS State line. The purpose of this filing is to eliminate the gateway of Pulaski County, KY, Powell County, KY between points in KY on and east of U.S. Hwy 31E, Clark County, KY, and the plant site of Bluegrass Cooperage, Louisville, KY.

No. MC 116014 (Sub-No. E27), filed June 15, 1975. Applicant: OLIVER TRUCKING CO., INC., P.O. Box 53, Winchester, KY 40391. Applicant's representative: Louis J. Amato, P.O. Box E, Bowling Green, KY 42101. *Lumber,* from points in KY on and east of U.S. Hwy 31E, to points in TN on and west of a line beginning at the KY-TN State line, and extending along U.S. Hwy 27 to junction TN Hwy 52, then along TN Hwy 52 to junction TN Hwy 42, then along TN Hwy 42 to junction U.S. Hwy 70S, then along U.S. Hwy 70S to junction TN Hwy 55, then along TN Hwy 55 to junction U.S. Hwy 41A, then along U.S. Hwy 41A to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction TN Hwy 97, then along TN Hwy 97 to the TN-AL State line. The purpose of this filing is to eliminate the gateways of Barren County, KY, points in KY on and east of U.S. Hwy 31E, and Pulaski County, KY.

No. MC 117574 (Sub-No. E80), filed June 29, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Applicant's representative: E. S. Moore, Jr. (same as above). *Agricultural implements, agricultural machinery, tractors* (other than truck tractors), *incidental machinery, attachments and parts* when moving with such implements, machinery or tractors, except commodities requiring special equipment, (1) between points in Haywood, Jackson, and Transylvania Counties, NC, on the one hand, and, on the other, all points in OR and WA, and points in: CA, on and north of a line commencing at a point in San Francisco on Interstate Hwy 80, then along Interstate Hwy 80 to the CA-NV

State line; ID, points on and west of a line commencing on U.S. Hwy 93 on the ID-NV State line; then along U.S. Hwy 30 to its junction with ID Hwy 55, then along ID Hwy 55 to its junction with U.S. Hwy 95, then along U.S. Hwy 95 to its junction with ID Hwy 13, then along ID Hwy 13 to its junction with U.S. Hwy 12, then along U.S. Hwy 12 to the ID-MT State line; MT, points on and west of a line commencing at the ID-MT State line on U.S. Hwy 12, then along U.S. Hwy 12 to its junction with U.S. Hwy 91, then along U.S. Hwy 91 to the Canadian-MT border; NV, points on and west of a line commencing at the CA-NV State line on U.S. Hwy 40, then along U.S. Hwy 40 to its junction with U.S. Hwy 93, then along U.S. Hwy 93 to the ID-NV State line.

(2) Between points in Guilford, Randolph, and Rockingham Counties in NC, on the one hand, and, on the other, points in CA, ID, MN, MT, NV, ND, OR, SD, UT, WA, WY, and points in the following described States: AZ, points west of a line commencing at Douglas, AZ, on the AZ-Mexico border along U.S. Hwy 666 in a northerly direction to its junction with U.S. Hwy 70, then in a northwesterly direction along U.S. Hwy 70 to its junction with U.S. Hwy 60, then along U.S. Hwy 60 in a northeasterly direction to its junction with State Hwy 61, then along State Hwy 61 in a northerly direction to the AZ-NM State line; CO, points west of a line commencing at the CO-NM State line along Interstate Hwy 25 in a northerly direction to its junction with U.S. Hwy 350, then along U.S. Hwy 350 in a northeasterly direction to its junction with U.S. Hwy 50 in an easterly direction to its junction with U.S. Hwy 385, then along U.S. Hwy 385 in a northerly direction to its junction with State Hwy 96, then along State Hwy 96 in an easterly direction to the CO-KS State line; Ia, points north of a line commencing at the NE-IA State line along State Hwy 2 in an easterly direction to its junction with U.S. Hwy 71, then along U.S. Hwy 71 in a northerly direction to its junction with U.S. Hwy 34, then in an easterly direction along U.S. Hwy 34 to its junction with U.S. Hwy 169, then along U.S. Hwy 169 in a northerly direction to its junction with Interstate Hwy 80, then along Interstate Hwy 80 in an easterly direction to its junction with State Hwy 330, then along State Hwy 330 in a northeasterly direction to its junction with U.S. Hwy 30, then along U.S. Hwy 30 in an easterly direction to its junction with U.S. Hwy 63, then along U.S. Hwy 63 in a northerly direction to its junction with U.S. Hwy 20, then along U.S. Hwy 20 in an easterly direction to its junction with State Hwy 150, then along State Hwy 150 in a northerly direction to its junction with U.S. Hwy 18, then along U.S. Hwy 18 in a northeasterly direction to the IA-WI State line; KS, points north of a line commencing at the CO-KS State line along State Hwy 96, then in an easterly direction along State Hwy 96 to its junction with State Hwy 27, then along State Hwy 27 to its junction with U.S. Hwy 40, then along U.S. Hwy 40 in an easterly direction to its junction with U.S. Hwy 83, then along U.S. Hwy 83 in a northerly direction and northeasterly direction to its junction with State Hwy 9, then along State Hwy 9 in an easterly direction to its junction with U.S. Hwy 281, then along U.S. Hwy 281 in a northerly direction to its junction with U.S. Hwy 36, then along U.S. Hwy 36 in an easterly direction to its junction with U.S. Hwy 73, then along U.S. Hwy 73 to the KS-NE State line; MI, points north of a line commencing at Lake MI at Frankfort, MI, along State Hwy 115, then in a southeasterly direction to its junction with U.S. Hwy 10, then along U.S. Hwy 10 in a southeasterly direction to its junction with State Hwy 15, then along State Hwy 15 in a southeasterly direction to its junction with State Hwy 46, then along State Hwy 46 to its termination at Lake Huron; NE, points west of a line commencing at the NE-KS State line along U.S. Hwy 73 to its junction with the NE-IA State line; NM, points north of a line commencing at State Hwy 53 in an easterly direction to its junction with State Hwy 32, then along State Hwy 32 in a northerly direction to its junction with U.S. Hwy 666, then along U.S. Hwy 666 in a northerly direction to its junction with U.S. Hwy 550, then along U.S. Hwy 550 in an easterly direction to its junction with State Hwy 17, then along State Hwy 17 in an easterly direction to its junction with U.S. Hwy 84, then along U.S. Hwy 84 in an southerly direction to its junction with U.S. Hwy 64, then along U.S. Hwy 64 in a northeasterly direction to its junction with Interstate Hwy 25, then along Interstate Hwy 25 in a northerly direction to the NM-CO State line; OH, points east and north of a line commencing at Lake Erie near Cleveland, OH along State Hwy 14, then along State Hwy 14 in a southeasterly direction to its junction with State Hwy 45, then along State Hwy 45 in a southeasterly direction to its junction with U.S. Hwy 30, then along U.S. Hwy 30 in a southeasterly direction to the OH-PA State line; WI, points north of a line commencing at the WI-IA State line along State Hwy 60 in an easterly direction to its junction with U.S. Hwy 12, then in a northerly direction along U.S. Hwy 12 to its junction with State Hwy 33, then along State Hwy 33 to its junction with State Hwy 22, then along State Hwy 22 in a northeasterly direction, then to its junction with U.S. Hwy 41, then along U.S. Hwy 41 in a northeasterly direction to its termination at Lake MI. The purpose of this filing is to eliminate the gateway of Shadygrove, PA.

(3) Between points in the NC Counties of Hoke, Roberson, and Scotland, on the one hand, and, on the other, points in CAL, COL, ID, MN, MT, NE, NV, ND, OR, SD, UT, WA, WI, and WY, and points in the following decribed States; AZ, points on and northwest of a line commencing at the AZ-Mexico Border along AZ Hwy 85 in a northerly direction to its junction with U.S Hwy 80, then in an easterly direction along U.S. Hwy 80 to its junction with U.S. Hwy 60, then in an easterly direction along U.S. Hwy 60 to its junction with AZ Hwy 61, then in a northeasterly direction along AZ Hwy 61 to the AZ-NM State line; IL, points on and north of a line commencing at the IA-IL State line along IL Hwy 17 in an easterly direction to its junction with U.S. Hwy 51, then in a northerly direction along U.S. Hwy 51 to its junction with U.S. Hwy 34, then in an easterly directin along U.S. Hwy 34 to the IL-Lake Michigan line; IA, points on and northwest of a line commencing at the MO-IA State line along IA Hwy 15 in a northerly direction to its junction with IA Hwy 2, then in an easterly direction along IA Hwy 2 to its junction with IA Hwy 1, then in a northerly direction along IA Hwy 1 to its junction with U.S. Hwy 34, then in an easterly direction along U.S. Hwy 34 to the IA-IL State line; KS points on and north of a line commencing at the OK-KS State line along U.S. Hwy 56 in a northeasterly direction to its junction with U.S. Hwy 83, then in a northerly direction along U.S. Hwy 83 to its junction with Interstate Hwy 70, then in an easterly direction along Interstate Hwy 70 to its junction with U.S. Hwy 81, then in a northerly direction along U.S. Hwy 81 to its junction with U.S. Hwy 36, then in an easterly direction along U.S. Hwy 36 to its junction with U.S. Hwy 73, then in a northerly direction along U.S. Hwy 73 to the KS-MO State line; MI, points on and northeast of a line commencing at St. Joseph, MI along U.S. Hwy 31 in a southeasterly direction to its junction with U.S. Hwy 12, then in an easterly direction along U.S. Hwy 12 to its junction with U.S. Hwy 27, then in a southerly direction along U.S. Hwy 27 to the OH-MI State line; MO, points on and north of a line commencing at the KS-MO State line along U.S. Hwy 136 in an easterly direction to its junction with MO Hwy 15, then in a northerly direction along MO Hwy 15 to the MO-IA State line; NM, points north and west of a line commencing at the AZ-NM State line along Interstate Hwy 40 in an easterly direction to its junction with U.S. Hwy 85, then in a northerly direction along U.S. Hwy 85 to its junction with U.S. Hwy 64, then in an easterly direction

along U.S. Hwy 64 to the NM-OK State line; OH, points on and north of a line commencing at the IN-OH State line along Interstate Hwy 80 in an easterly direction to its junction with OH Hwy 66, then in a southerly diretion along OH Hwy 66 to its junction with U.S. Hwy 6, then in an easterly direction along U.S. Hwy 6 to its junction with OH Hwy 199, then in a southeasterly direction along OH Hwy 199 to its junction with OH Hwy 18, then in an easterly direction along OH Hwy 18 to its junction with U.S. Hwy 224, then in an easterly direction along U.S. Hwy 224 to its junction with U.S. Hwy 250, then in a southeasterly direction along U.S. Hwy 250 to the OH-WV State line; WV, points on and north of a line commencing at the OH-WV State line along U.S. Hwy 250 in a southeasterly direction to its junction with U.S. Hwy 50, then in an easterly direction along U.S. Hwy 50 to the WV-State line.

(4) Between points in the N.C. Counties of Montgomery, Moore, and Richmond, on the one hand, and, on the other, points in CA, ID, MT, NE, NV, ND, OR, SD, UT, WA, WY, and points in the following described States; AZ, points on and north and west of a line commencing at Yuma, AZ, along Interstate Hwy 8, then in a northerly direction to its junction with U.S. Hwy 80, then in a northerly direction along U.S. Hwy 80 to to its junction with U.S. Hwy 89, then in a northerly direction along U.S. Hwy 89 to its junction with U.S. Hwy 160, then in a northeasterly direction to the AZ-CO State line; CO, points north and west of a line commencing at the AZ-CO State line along U.S. Hwy 160, then in an easterly direction to its junction with U.S. Hwy 85, then in a northerly direction along U.S. Hwy 85 to its junction with U.S. Hwy 24, then in a northeasterly direction along U.S. Hwy 24 to its junction with U.S. Hwy 385, then in a northerly direction along U.S. Hwy 385 to its junction with U.S. Hwy 34 in an easterly direction to the CO-NE State line; NE, points north and west of a line commencing at the CO-NE State line along U.S. Hwy 34, then in a northeasterly direction to its junction with U.S. Hwy 83, then in a northerly direction along U.S. Hwy 83, to its junction with U.S. Hwy 30, then in an easterly direction along U.S. Hwy 30 to its junction with U.S. Hwy 77, then in a northerly direction to the NE-IA State line; IA, points north and west of a line commencing at the NE-IA State line along U.S. Hwy 75, then in a northeasterly direction to its junction with State Hwy 60, then in a northeasterly direction along State Hwy 60 to its junction with U.S. Hwy 18, then in an easterly direction along U.S. Hwy 18 to its junction with State Hwy 4, then in a northerly direction to the IA- MN State line; MN, points north and west of a line commencing at the IA-MN State line along State Hwy 4, then in a northeasterly direction to its junction with State Hwy 60, then in a northeasterly direction along State Hwy 60 to its junction with U.S. Hwy 169, then in a northeasterly direction along U.S. Hwy 169 to its junction with Interstate Hwy 35, then in a northeasterly direction to Duluth, MN; MI, only Sault Ste. Marie, MI; OH, points north of a line commencing at Lake Erie near Ashtabula, OH along State Hwy 11, then in a southerly direction, then to its junction with State Hwy 82, then to the OH-PA State line.

(5) Between points in the Counties of Franklin, Vance and Warren in NC, on the one hand, and, on the other, points in AZ, CA, CO, DE, ID, IA, MI, MN, MT, NE, NV, ND, OR, SD, UT, WA, WI, and WY, and points in the following described States: IL, points north of a line commencing at the IL-MO State line along U.S. Hwy 24, then in a northeasterly direction to its junction with Interstate Hwy 57, then along Interstate Hwy 57 in a northerly direction to its junction with State Hwy 17, then along State Hwy 17 in a northeasterly direction to the IL-IN State line; IN, points north of a line commencing at the IL-IN State line along U.S. Hwy 6 in an easterly direction to the IN-OH State line; KS, points west of a line commencing at the OK-KS State line along Interstate Hwy 35 in a northerly direction to its junction with U.S. Hwy 50, then along U.S. Hwy 50 in an easterly direction to its junction with Interstate Hwy 35, then along Interstate Hwy 35 in an easterly direction to the KS-MO State line; MO, north of a line commencing at the MO-KS State line along U.S. Hwy 24, then in an easterly direction to the MO-IL State line; NM, points west and north of a line commencing at the NM-TX State line along U.S. Hwy 62 in a northerly direction to its junction with U.S. Hwy 285, then along U.S. Hwy 285 in a northerly direction to its junction with U.S. Hwy 82, then along U.S. Hwy 82 in an easterly direction to its junction with State Hwy 172, then along State Hwy 172 in a northerly direction to its junction with U.S. Hwy 380, then along U.S. Hwy 380 in an easterly direction to its junction with State Hwy 18, then along State Hwy 18 in a northerly direction to its junction with U.S. Hwy 70, then along U.S. Hwy 70 in a northeasterly direction to its junction with U.S. Hwy 60, then along U.S. Hwy 60 to the NM-TX State line; OH, points north of a line commencing at the OH-IN State line along U.S. Hwy 6 in an easterly direction to its junction with U.S. Hwy 127, then along U.S. Hwy 127 in a southerly direction to its junction with U.S. Hwy 24, then along U.S. Hwy 24 in an easterly direction to its junction with State Hwy 15, then along State Hwy 15 in a southeasterly direction to its junction with U.S. Hwy 23, then along U.S. Hwy 23 in a southeasterly direction to its junction with U.S. Hwy 30, then along U.S. Hwy 30 in an easterly direction to its junction with State Hwy 19, then along State Hwy 19 in a southeasterly direction to its junction with State Hwy 97, then along State Hwy 97 in a southeasterly direction to its junction with State Hwy 39, then along State Hwy 39 in a southeasterly direction to its junction U.S. Hwy 250, then along U.S. Hwy 250 in a southeasterly direction to its junction with U.S. Hwy 22, then along U.S. Hwy 22 in an easterly direction to the OH-WV State line; OK, points west of a line commencing at the OK-TX State line along U.S. Hwy 60 in an easterly direction to its junction with U.S. Hwy 64, then along U.S. Hwy 64 in an easterly direction to its junction with Interstate Hwy 35, then along Interstate Hwy 35 in a northerly direction to the OK-KS State line; TX, points west of a line commencing at Presidio, TX, on the TX-Mexico Border along U.S. Hwy 67 in a northerly direction, then to its junction with U.S. Hwy 90, then along U.S. Hwy 90 in a northerly direction to its junction with State Hwy 54, then along State Hwy 54 in a northerly direction to the TX-NM State line; WV, points north of a line commencing at the WV-OH State line along U.S. Hwy 22 then to the WV-PA State line. The purpose of this filing is to eliminate the gateway of Waynesboro, PA. Restrictions: (1) All authority granted above is restricted against the transportation of shipments between Racine, WI, Burlington and Bettendorf, IA, Rockford and Rock Island, IL. (2) The authority granted herein to the extent that it duplicates any authority heretofore granted to or now held by carrier shall not be construed as conferring more than one operating right.

No. MC 118831 (Sub-No. E135), filed April 19, 1976. Applicant: CENTRAL TRANSPORT, INC., P.O. Box 5388, Uwharrie Road, High Point, NC 27263. Applicant's representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. *Liquid petrochemicals,* in bulk, in tank vehicles from points in SC on, east, and south of a line beginning on U.S. Hwy 21 at the NC-SC State line; then southward on U.S. Hwy 21 to SC Hwys 72-121 to a junction with SC Hwy 901; then southward on SC Hwy 901 to a junction with SC Hwy 9; then eastward on SC Hwy 9 to a junction with U.S. Hwy 21; then southward on U.S. Hwy 21 to a junction with SC Hwy 97; then southeastward on SC Hwy 97 to a junction with U.S. Hwy 601; southward on U.S. Hwy 601 to Lugoff, SC; from Lugoff, SC, back to Camden, SC, on Hwy 601, then southward on U.S.

Hwy 251 to a junction with SC Hwy 261; then southward on SC Hwy 261 to a junction with U.S. Hwy 15; then southward on U.S. Hwy 15 to a junction with U.S. Hwy 301; then northward on U.S. Hwy 301 to a junction with U.S. Hwy 521; then eastward on U.S. Hwy 521 to a junction with U.S. Hwy 52; then southward on U.S. Hwy 52 to a junction with SC Hwy 45; then eastward on SC Hwy 45 to McClellanville, SC, and then due east to the Atlantic Ocean, to points in IL (except points in the East St. Louis commercial zone), IN, KY, MI, MO (except points in the St. Louis commercial zone), OH, TN, and WI. The purpose of this filing is to eliminate the gateway of Charlotte, NC.

No. MC 118831 (Sub-No. E136), filed April 19, 1976. Applicant: CENTRAL TRANSPORT, INC., P.O. Box 5388, Uwharrie Road, High Point, NC 27263. Applicant's representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. *Liquid petrochemicals,* in bulk, in tank vehicles from Greenville, SC, to points in MI and WI, and points in MO (except the St. Louis, MO, commercial zone), IL (except the East St. Louis, IL, commercial zone), IN and OH, on, north, and west of a line starting at MO Hwy 5 on the AR-MO State line, then northward on MO Hwy 5 to the junction with U.S. Hwy 60, then eastward on U.S. Hwy 60 to the junction with U.S. Hwy 63, then northward on U.S. Hwy 63 to the junction with U.S. Hwy 66, then northward on U.S. Hwy 66 to a junction with Interstate Hwy 44, then eastward on Interstate Hwy 44 to a junction with Interstate Hwys 55-70, then eastward on Interstate Hwys 55-70 to a junction with Interstate Hwy 57, then northward on Interstate Hwy 57 to a junction with Interstate Hwy 74, then eastward on Interstate Hwy 74 to a junction with IL Hwy 1, then northward on IL Hwy 1 to a junction with U.S. Hwy 24, then eastward on U.S. Hwy 24 to a junction with U.S. Hwy 41, then northward on U.S. Hwy 41 to a junction with IN Hwy 14, then eastward on IN Hwy 14 to a junction with IN Hwy 25, then northeastward on IN Hwy 25 to a junction with U.S. Hwy 30, then eastward on U.S. Hwy 30 to a junction with U.S. Hwy 127, then southward on U.S. Hwy 127 to a junction with U.S. Hwy 33, then southeastward on U.S. Hwy 33 to a junction with OH Hwy 29, then southeastward on OH Hwy 29 to a junction with U.S. Hwy 68, then southward on U.S. Hwy 68 to a junction with OH Hwy 72, then southward on OH Hwy 72 to a junction with U.S. Hwy 35, then southeastward on U.S. Hwy 35 to a junction with OH Hwy 93, then southeastward on OH Hwy 93 to a junction with OH Hwy 233, then southeastward on OH Hwy 233 to a junction with OH Hwy 141, then southward on OH 141 to a junction with OH Hwy 378, then southward on OH Hwy 378 to Getaway, OH, then by unnumbered road to Chesapeake, OH. The purpose of this filing is to eliminate the gateway of Charlotte, NC.

No. MC 118831 (Sub-No. E137), filed April 19, 1976. Applicant: CENTRAL TRANSPORT, INC., P.O. Box 5388, Uwharrie Road, High Point, NC 27263. Applicant's representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. *Liquid petrochemicals,* in bulk, in tank vehicles, from Beaufort, SC, to points in IL (except the East St. Louis commercial zone), IN, KY, MI, MO (except the St. Louis commercial zone), OH, WI, and points in TN on and north of a line beginning at U.S. Hwy 25 on the TN-NC border, then westward on U.S. Hwy 25 to a junction with Interstate Hwy 40, then westward on Interstate Hwy 40 to a junction with U.S. Hwy 70, then westward on U.S. Hwy 70 to a junction with TN Hwy 104, then westward on TN Hwy 104 to a junction with TN Hwy 20, then westward on TN Hwy 20 to the AR-TN border. The purpose of this filing is to eliminate the gateway of Charlotte, NC.

No. MC 118831 (Sub-No. E141), filed April 19, 1976. Applicant: CENTRAL TRANSPORT, INC., P.O. Box 5388, Uwharrie Road, High Point, NC 27263. Applicant's representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. *Liquid petrochemicals,* in bulk, in tank vehicles, from points in SC on and east of a line beginning at SC Hwy 9 on the NC-SC border, then southward on SC Hwy 9 to a junction with SC Hwy 292, then southward on SC Hwy 292 to a junction with SC Hwy 290, then southward on SC Hwy 290 to a junction with U.S. Hwy 221, then southward on U.S. Hwy 221 to a junction with SC Hwy 39, then southward on SC Hwy 39 to a junction with SC Hwy 121, then southward on SC Hwy 121 to a junction with SC Hwy 19, then southeastward on SC Hwy 19 to a junction with U.S. Hwy 78, then west on U.S. Hwy 78 to a junction with SC Hwy 125, then southeastward on SC Hwy 125 to a junction with SC Hwy 301, then southwestward on SC Hwy 301 to the SC-GA border, to points in MO (except the St. Louis commercial zone). The purpose of this filing is to eliminate the gateway of Charlotte, NC.

No. MC 118831 (Sub-No. E142), filed April 19, 1976. Applicant: CENTRAL TRANSPORT, INC., P.O. Box 5388, Uwharrie Road, High Point, NC 27263. Applicant's representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. *Liquid petrochemicals* (except anhydrous ammonia, fertilizer, and fertilizer materials), in bulk, from points in NC on and east of a line beginning at U.S. Hwy 176 on the NC-SC border, then northward on U.S. Hwy 176 to a junction with NC Hwy 108, then eastward on NC Hwy 108 to a junction with U.S. Hwy 64, then northward on U.S. Hwy 64 to a junction with NC Hwy 18, then northward on NC Hwy 18 to a junction with NC Hwy 268, then eastward on NC Hwy 268 to a junction with U.S. Hwy 601, then northward on U.S. Hwy 601 to a junction with U.S. Hwy 52, then northward on U.S. Hwy 52 to the NC-SC border; to St. Louis, MO, and East St. Louis, IL. The purpose of this filing is to eliminate the gateway of Charlotte, NC, and Robertson County, TN.

No. MC 118831 (Sub-No. E143), filed April 19, 1976. Applicant: CENTRAL TRANSPORT, INC., P.O. Box 5388, Uwharrie Road, High Point, NC 27263. Applicant's representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. *Liquid petrochemicals,* in bulk (except anhydrous ammonia, fertilizer, and fertilizer materials) from points in NC on and east of a line beginning on U.S. Hwy 321 at the NC-SC border, then northward on U.S. Hwy 321 to a junction with NC Hwy 275, then southwestward on NC Hwy 275 to a junction with NC Hwy 216, then northward on NC Hwy 216 to a junction with NC Hwy 150, then northeastward on NC Hwy 150 to a junction with U.S. Hwy 21, then northward on U.S. Hwy 21 to a junction with NC Hwy 268, then northeastward on NC Hwy 268 to a junction with U.S. Hwy 601, then northward on U.S. Hwy 601 to a junction with U.S. Hwy 52, then northward on U.S. Hwy 52 to the NC-VA border; to AR. The purpose of this filing is to eliminate the gateway of Charlotte, NC and Robertson County, TN.

No. MC 124174 (Sub-No. E9), filed June 4, 1974. Applicant: MOMSEN TRUCKING CO., P.O. Box 37490, Omaha, NE 68137. Applicant's representative: Karl E. Momsen (same as above). *Animal and poultry feed and animal and poultry feed ingredients,* (1) between Anita, IA, and points within 15 miles thereof, on the one hand, and, on the other, those points in IA within 60 miles of Auburn, NE, on, south, and west of a line beginning at the IA-NE State line, at Council Bluffs, IA, at junction of IA Hwy 92 and U.S. Hwy 275, then along U.S. Hwy 275 to junction U.S. Hwy 34, then along U.S. Hwy 34 to junction IA Hwy 41, then along IA Hwy 41 to junction IA Hwy 184, then along IA Hwy 184 to a point 4 miles east, then south on unnumbered highway to junction IA Hwy 174, then along IA Hwy 174, south 12 miles on unnumbered highway to junction U.S. Hwy 59, then along U.S. Hwy 59 to the IA-MO State line; (2) between points in IA within 15

miles of Anita, IA, on the one hand, and, on the other, points in MO within 60 miles of Auburn, NE, on and west of a line beginning at the IA-MO State line, and extending along U.S. Hwy 59 to junction U.S. Hwy 159 to the MO River; (3) between Anita, IA, and 15 miles thereof, on the one hand, and, on the other, points in KS within 60 miles of Auburn, NE, except those east of a line beginning at the NE-KS State line and extending along KS Hwy 7 to Iowa Point, KS, southwest on unnumbered highway to Highland, KS, then south along KS Hwy 120 to junction KS Hwy 20, to junction U.S. Hwy 73 southeast to a point at or near Lancaster, KS, which is a point of the arc of the radius of 60 miles of Auburn, NE; (4) from points in NE, KS, and MO within 60 miles of Auburn, NE, to a point in IA within 50 miles of Spencer, IA, except those south of a point on IA Hwy 31 and the Cherokee-Ida County line, then east to U.S. Hwy 59 to junction U.S. Hwy 20, to junction U.S. Hwy 71, north 4 miles to unnumbered road, then east through Nemaha and Knoke, IA, to the junction of IA Hwy 4 and the 50 mile radius of Spencer, IA. The purpose of this filing is to eliminate the gateway of Omaha, NE, and its commercial zone, including Council Bluffs, IA.

By the Commission.

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

[FR Doc. 78-5393 Filed 2-28-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01]

1

[M-101, Amdt. 4, Feb. 23, 1978]

NOTICE OF DELETION OF ITEM FROM THE FEBRUARY, 23, 1978 AGENDA

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., February 23, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 12. Dockets 30526, 31778, 31849, 31934, 31939, 31940, 31961, 31983 and 32106, Applications by TWA and Pan American to continue suspensions and exemptions involved in their route exchange agreement. (Memo No. 7782, BPDA, BIA, OGC.)

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: This item was deleted from the February 23, 1978, agenda so that the Board could give more consideration to the issues involved. Accordingly, the following Members have voted that agency business requires the deletion of item 12 from the February 23, 1978 agenda and rescheduled for the March 1 agenda and that no earlier announcement of this deletion was possible:

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Richard J. O'Melia

[S-446-78 Filed 2-27-78; 9:53 am]

[6320-01]

2

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., March 1, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.
2. Dockets 31317 et al. Comprehensive liberalization of charter rules (OGC).
3. Docket 24694 and 31976, Miami-Los Angeles cases, Petitions for Reconsideration (OGC).
4. Docket 31737, Amendment of Part 300 on Separation of Functions (request for instruction) (OGC).
5. Docket 29323, International Air Service Co., Acquisition of Control of Aloha Airlines, Inc.—motion for interim approval of interlocking relationship (OGC).
6. Docket 30561, Complaint of *Miles Laboratories, Inc.* v. *United Parcel Service Co.*—motion for review of BOE dismissal of third-party complaint (Memo No. 7776, OGC).
7. Docket 28655, *Seattle/Portland-Japan Service Investigation* (request for instructions) (Memo No. 7758, 7758-A, OGC).
8. Docket 29790, Dallas-Fort Worth-Western Mexico—Order of Discretionary Review (OGC).
9. Docket 29445, Las Vegas/Dallas/Fort Worth Nonstop Service Investigation—Recommendations concerning petitions for discretionary review (OGC).
10. Dockets 28213, 28955, 29373, 29431, 29512, 29618, and 29984, Applications of Yusen Air and Sea Service Co., Ltd. (Japan) d.b.a. Yusen Air and Sea Service (U.S.A.), Inc. (Yusen), Kinki Nippon Tourist Co. Ltd. (Japan) d.b.a. Kintetsu World Express, Inc. (U.S.A.) (Kintetsu); Warehousing Co. Ltd. (Japan) d.b.a. Nissin International Transport, U.S.A., Inc. (Nissin); Nippon Express Co., Ltd. (Japan) d.b.a. Nippon Express U.S.A, Inc. (Nippon); Mitsui Air & Sea Service Co., Ltd. (Japan) d.b.a. (Mitsui); "K" Line Air Service Ltd. (Japan) d.b.a. "K" Line New York Inc. (U.S.A.) (K-Line); and Nishi Nippon Railroad Co., Ltd. (Japan) d.b.a. NNR Aircargo Service (U.S.A.) Inc. (Nishi) (Memo No. 6758-A, OGC).
11. Docket 29880, Compensation of participants in Board preceedings (Memo No. 6751-A, OGC).
12. Docket 29186, *Memphis-Twin Cities/Milwaukee Case* (OGC, OEA).
13. Docket 21670, *Frontier Airlines, Inc. Subsidy Mail Rates*—Petitions for discretionary review (OGC).
14. Dockets 30526, 31778, 31849, 31934, 31939, 31961, 31983, and 32106, Applications by TWA and Pan American to continue suspensions and exemptions involved in their route exchange agreement (Memo No. 7782, BPDA, BIA, OGC).
15. Dockets 31870, 31981, 31984, Order that scopes and established Subpart M procedures to govern the Baltimore/Washington Houston Low-Fare Route Case (Memo No. 7641-B, BPDA, BLJ).
16. Docket 30971, Western Air Lines, Inc. Motion for Hearing on Phoenix-Salt Lake City Competitive Nonstop Authority (Memo No. 7785, BPDA).
17. Docket 31967, Ozark's Petition For Show Cause, or, Alternatively, Motion For Hearing on St. Louis-Washington (Via Dulles Airport) (Memo No. 7784, BPDA).
18. Docket 30717, Closing the docket which solicited comments on the fare-effectiveness rule (Memo No. 6967-B, BPDA).
19. Fare increase and fare structure changes proposed in 48 state-Alaska markets by various carriers, and intra-Alaska increase proposed by Alaska Airline (BPDA).
20. Docket 30332, LATA Agreement proposing increase in North/Central Pacific cargo rates (BPDA).
21. Docket 31400, petition of Rocky Mountain Airways for reconsideration of Board Order 77-12-130; Dockets 31400 and 28342, Rocky Mountain Airways, motion to consolidate its amendment No. 2 to application in Docket 28342 with Docket 31400, requesting authority in some of the new markets which the Board put in issue in Order 77-12-130; Dockets 31400 and 31270, Aspen Airways' motion for leave to file an unauthorized document, the petition of Aspen for reconsideration of Board Order 77-12-130 (Memo No. 4680-G, BLJ, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

The Board will not be able to meet on Thursday, March 2, 1978 because of the Senate Appropriations hearings scheduled for that day. Because of these hearings, the Board must meet

on Wednesday, March 1, 1978. Inadvertently, that information was not seen by the Secretary's office in time for a meeting notice to issue with a full seven days' notice. So that the orderly conduct of the Board's business will not be delayed, the following Members have voted that agency business requires that the Board meet on Wednesday, March 1, 1978 with six days' notice and that no earlier announcement of the meeting was possible:

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Lee R. West
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

[S-445-78 Filed 2-27-78; 9:53 am]

[6570-06]

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 7518, S-412-78.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, February 28, 1978.

CHANGES IN THE MEETING:

Addition of the following items to the portion open to the public:

5. Freedom of Information Act Appeal 77-12-FOIA-247 concerning a request for the names and addresses of certain parties who filed charges of discrimination.

6. Proposed two-month extension of funding of contracts with three private bar organizations and extension of time only of one additional contract to run through April 30, 1978.

7. Proposal to hold public hearings to develop possible commission policy on work-scheduling as it relates to religious discrimination.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required these changes and that no earlier announcement was possible.

The vote was as follows:

In favor of changes: Eleanor Holmes Norton, Chair, Daniel E. Leach, Vice Chair, Ethel Bent Walsh, Commissioner.
Opposed: None.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued February 24, 1978.

[S-450-78 Filed 2-27-78; 11:52 am]

4

FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., Wednesday, February 22, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission Meeting.

CHANGES IN THE MEETING: The following agenda item should be deleted:

Agenda, Item No., Subject

Common Carrier—8—Western Union Tariff FCC No. 254, revising rates and rate structure for low-speed private line services.

The following Common Carrier items will be considered on Thursday, February 23, 1978, starting at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, D.C. instead of in the sequence indicated on the earlier notice.

Agenda, Item No., Subject

Common Carrier—3—Declaratory ruling concerning interconnection obligations of AT&T.
Common Carrier—4—AT&T's petitions to suspend Southern Pacific Communications Company's Transmittal No. 113, revising its Tariff FCC No. 6 to offer Sprint Option V service.
Common Carrier—5—MTS and WATS Market Structure.

Items remaining to be considered from the previous day will follow these Common Carrier items.

The prompt and orderly conduct of Commission business requires these changes and no earlier announcement of the changes was possible.

CONTRACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Office, telephone 202-632-7260.

Issued: February 21, 1978; February 22, 1978.

[S-447-78 Filed 2-27-78; 9:53 am]

[6712-01]

5

FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE: Follows 9:30 a.m., Open Commission Meeting, Wednesday, February 22, 1978.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Closed Commission meeting.

CHANGES IN THE MEETING: This meeting has been rescheduled for Wednesday, March 1, 1978, starting at 9:30 a.m., Room 856, at 1919 M Street, NW., Washington, D.C.

MATTERS TO BE CONSIDERED:

Agenda, Item No., Subject

Complaints and Compliance—1—Results of investigation into the operations of WJPD-AM and FM, Ishpeming, Mich.
Complaints and Compliance—2—Field investigations into the operations of KODE-TV, Joplin, Mo., FOAM-TV, Pittsburg, Kans. KTVJ, Joplin, Mo.
Hearing—1—Petition for special relief in the Rhinelander, Wis. TV renewal proceeding. (Docket No. 21266.
Hearing—2—Motions to certify record in the Orlando, Fla. television proceeding. (Docket Nos. 11083, 17339, 17341, 17342, 17344.)
Hearing—3—Comments of seven applicants for a construction permit for an AM station in Los Angeles, Calif. (Docket Nos. 15752, 15754, 15755, 15756, 15764, 15765 and 15766.)
Hearing—4—Petition filed by Midwest St. Louis, Inc., for a declaratory ruling in a comparative hearing for the UHF TV station in St. Louis, Mo. (Docket Nos. 20820, 20821.)
Hearing—5—Applications for review of a final review board decision in the KTVO, Inc., Kirksville, Mo. television proceedings. (Docket No. 20100.)
Hearing—6—Petition for reconsideration filed by Talton Broadcasting Co., of a Commission decision in the renewal proceeding of WHBB-AM, Selma, Ala. (Docket No. 20723.)
Hearing—7—Draft decision in the Oil Shale Broadcastng Co. (KWSR), Rifle, Colo. renewal proceedings. (Docket No. 20231.)

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Office, telephone 202-632-7260.

Issued: February 22, 1978.

[S-448-78 Filed 2-27-78; 9:53 am]

[6714-01]

6

NOTICE OF CHANGE IN SUBJECT MATTER OF AGENCY MEETING

FEDERAL DEPOSIT INSURANCE CORPORATION.

On Friday, February 24, 1978, Chairman George A. LeMaistre and Director John G. Heimann (Comptroller of the Currency) determined that Corporation business required their addition of the following matter to the agenda for the closed Board of Directors' meeting scheduled for 2:00 p.m. on Thursday, March 2, 1978:

Request from a State banking authority that the Corporation, pursuant to section 10(b) of the Federal Deposit Insurance Act, assist in an examination of a national bank in connection with the bank's application for a State charter.

The Board further determined, by the same vote, that no earlier notice of a change in the subject matter of the meeting was practicable; that the Board's deliberations with respect to the matter were exempt from the open meeting requirements of the

"Government in the Sunshine Act" by subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10) thereof; and that the public interest did not require consideration of the matter in a meeting open to public observation.

Dated: February 24, 1978.

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

[S-449-78 Filed 2-27-78; 10:44 am]

[6740-02]

7

NOTICE OF MEETING

FEBRUARY 27, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: February 28, 1978. (Following regular Commission meeting.)

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pending civil litigation.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

KENNETH F. PLUMB,
Secretary.

[S-451-78 Filed 2-27-78; 1:17 pm]

[6740-02]

8

FEDERAL ENERGY REGULATORY COMMISSION.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 8057 Pub. February 27, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: March 1, 1978, 10:00 a.m.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CP-11(A)—CP77-363, Columbia Gas Transmission Corp. and National Fuel Gas Supply Corp.
CP-11(B)—CP77-38, Tennessee Gas Pipeline Co., a division of Tenneco Inc., and National Fuel Gas Supply Corp.
CP-11(C)—CI76-432, Cabot Corp., CP76-19, Columbia Gas Transmission Corp., and the Sylvania Corp., CP76-361, Columbia Gas Transmission Corp.
CP-11(D)—CP77-477, Panhandle Eastern Pipe Line Co.

KENNETH F. PLUMB,
Secretary.

[S-452-78 Filed 2-27-78; 1:17 pm]

[6740-02]

9

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published February 27, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: March 1, 1978 10 a.m.

CHANGE IN THE MEETING: The regular Commission meeting scheduled for Wednesday, March 1, 1978, at 10 a.m. has been changed to Tuesday, February 28, 1978, at 10 a.m.

KENNETH F. PLUMB,
Secretary.

[S-444-78 Filed 2-27-78; 9:53 am]

[6730-01]

10

FEDERAL MARITIME COMMISSION.

TIME AND DATE: March 9, 1978, 10 a.m.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Agreement Nos. 5680-26 and 6060-22: Modifications of the Pacific-Straits Conference Agreement and the Pacific Indonesian Conference Agreement, respectively to revise the self-policing provisions of their agreements
2. Notice of Proposed Rulemaking: Capitalization of interest incurred during a period of construction
3. Docket No. 77-54: *Allied Chemical International Corp.* v. *Atlantic Lines*—Review of initial decision
4. Special Docket No. 523: *Mitsui and Co. U.S.A. Inc.* vs. *Pacific Westbound Conference*—Review of initial decision
5. Special Docket No. 534: *Cutler-Hammer Denver* v. *Lykes Bros. Steamship Co., Inc.*—Consideration of record
6. Special Docket No. 531: *Mitsubishi International Corporation* v. *Far East Conference and American President Lines, Ltd.*—Consideration of record
7. Docket No. 71-29: *Baton Rouge Marine Contractors, Inc.* v. *Cargill, Inc.*—Consideration of request for oral argument
8. Docket No. 76-58: Reports by Common Carriers by water in the Domestic Offshore Trades—Consideration of record

Portions closed to the public:

1. Docket No. 73-79: *Household Goods Forwarders Association of America, Inc., et al.* v. *American Export Lines, Inc., Sea-Land Service, Inc., United States Lines, Inc.*—Consideration of petition of Household Goods Forwarders Association of America for reconsideration of Commission's decision
2. Docket No. 74-10: Freight Forwarder Bids on Government Shipments at United States Ports—Possible violations of the Shipping Act, 1916, and General Order 4—Consideration of petition of General Services Administration for Declaratory Order
3. Docket No. 77-52: Far East Conference, Pacific Westbound Conference, Japan/Korea-Atlantic and Gulf Freight Conference and the Trans-Pacific Freight Conference of Japan/Korea Assessment of Incheon Arbitrary United States Import/Export Trades—Consideration of request of Hearing Counsel for protective order

CONTRACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5727.

[S-455-78 Filed 2-27-78; 3:39 pm]

[6770-01]

11

FCSC MEETING NOTICE NO. 18-77—NOTICE OF MEETINGS

FOREIGN CLAIMS SETTLEMENT COMMISSION.

Announcement in regard to commission meetings and hearings.

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of routine Commission business and other matters specified, as follows:

Date, Time and Subject Matter

Wednesday, March 1, 1978, at 10:30 a.m.—Canceled.
Wednesday, March 8, 1978, at 10:30 a.m.—Canceled.
Wednesday, March 15, 1978, at 10:30 a.m.—Canceled.
Wednesday, March 22, 1978, at 10:30 a.m.—Canceled.
Wednesday, March 29, 1978, at 10:30 a.m.—Canceled.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Executive Director, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, D.C. 20579, telephone 202-653-6156.

Dated at Washington, D.C. on February 21, 1978.

FRANCIS T. MASTERSON,
Executive Director.

[S-456-78 Filed 2-27-78; 3:39 pm]

[7020–02]

12

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 9 a.m., P.s.t., and 12 noon, P.s.t., Tuesday, March 7, 1978.

PLACE: Seattle Center, 305 Harrision Street, Seattle, Wash.; and Room 117, 701, E. Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints (if necessary).
5. Work gloves (Inv. TA-406-1)—briefing and vote on the question of market disruption.
6. Any items left over from previous agenda.

CONTACT PERSONS FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-454-78 Filed 2-27-78; 3:39 pm]

[7020–02]

13

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 9:30 a.m., Friday, March 10, 1978.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Work gloves (Inv. TA-406-1)—vote on remedy, if necessary.
2. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-453-78 Filed 2-27-78; 3:39 pm]

[4110–29]

14

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH.

TIME AND DATE: March 17, 1978, 9:30 a.m.-3:30 p.m.

PLACE: Room 823, National Institute of Education, 1200 19th Street NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Swearing-in ceremony and remarks (9:30 a.m.-10 a.m.).
2. Approval of minutes January 12-13, 1978 (10 a.m.-10:05 a.m.)
3. Director's general report (10:05 a.m.-10:45 a.m.).
4. Director's report on status of labs and centers (10:45 a.m.-11:15 a.m.)
5. Director's report on procurement policy and practices (11:15 a.m.-12 noon).
6. Report of review and reports committee: annual report (1 p.m.-2 p.m.)
7. Executive committee report: Issues for future consideration (chairman's report) (2 p.m.-Adjournment).

CONTACT PERSON FOR MORE INFORMATION:

Mrs. Ella L. Jones, Administrative Coordinator/NCER, telephone, 202-254-7900.

PETER H. GERBER,
Chief, Policy and Administrative Coordination, National Council on Educational Research.

[S-443-78 Filed 2-27-78; 9:53 am]

federal register

WEDNESDAY, MARCH 1, 1978
PART II



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

■

STATE COASTAL MANAGEMENT PROGRAMS

Development and Approval

[3510-08]

Title 15—Commerce and Foreign Trade

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

PART 923—COASTAL ZONE MANAGEMENT PROGRAM APPROVAL REGULATIONS

Interim—final Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA) Department of Commerce.

ACTION: Interim final rule.

SUMMARY: These interim final regulations revise and incorporate several sets of existing regulations dealing with development and approval of State coastal management programs. These regulations reflect more accurately the interpretation of program approval requirements being provided by the Office of Coastal Zone Management (OCZM).

EFFECTIVE DATE: April 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Carol Sondheimer, State Programs, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street NW., Washington, D.C. 20235, 202-634-1672.

SUPPLEMENTARY INFORMATION: The National Oceanic and Atmospheric Administration (NOAA) is issuing these revised regulations, pursuant to sections 305, 306, and 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), hereafter referred to as the "Act," in interim final form to make effective as soon as possible regulations which reflect more accurately the interpretation of program approval requirements being provided by the Office of Coastal Zone Management (OCZM). Since a substantial number of coastal States will seek program approval within the next several months, it is appropriate to have in effect revised regulations that provide greater detail and clarity as to the approval requirements. NOAA also desires to respond to requests from several Federal agencies and other interested parties to discuss further some of the major issues addressed in the regulations prior to their publication in final form. NOAA believes that such an open process follows the spirit of the Act. However, certain constraints exist with respect to agency informal rulemaking which have been emphasized in a recent Federal court decision (*Home Box Office* v. *FCC*, D.C. Cir., March 25, 1977). While engaged in informal rulemaking, Federal agency officials are limited with respect to communications they may have with persons outside the agency on the merits of the rulemaking. In order to accommodate the above competing needs, NOAA has determined that the most appropriate procedure would be this issuance in interim final form. Following this publication, OCZM will meet, during the comment period provided below, with the interested parties who have expressed a desire to do so, and a written summary of each discussion will be placed in the record. The public is invited to review the record during this period and to subit written comments on such summaries. Following consideration of these discussions and any other comments received during the comment period, and making revisions where appropriate and legal, NOAA will promulgate these regulations in final form.

These regulations revise and supersede the following sets of existing regulations related to management program development and approval:

(1) Final Coastal Zone Management Program Development Regulations (15 CFR Part 920) published in the FEDERAL REGISTER on April 29, 1977, dealing with section 305 program development, preliminary approval, and grant applications;

(2) Final Coastal Zone Management Program Approval Regulations (15CFR Part 923) published in the FEDERAL REGISTER on January 9, 1975, dealing with section 306 program approval requirements;

(3) Interim Coastal Zone Management Federal-State Consultation Regulations (15 CFR Part 925) published in the FEDERAL REGISTER on February 2, 1975, dealing with subsections 307(b) and 307(h) of the Act which have to do with Federal consultation, review and approval procedures, and mediation during program development and preliminary approval;

(4) Final Coastal Zone Management Program Approval Regulations Amendment (15 CFR Part 923) published in the FEDERAL REGISTER on November 2, 1976, dealing with subsection 306(h) of the Act with respect to island segmentation; and

(5) Proposed Coastal Zone Management Program Approval Regulations Amendments (15 CFR Part 923) published in the FEDERAL REGISTER on December 30, 1976, dealing with subsections 306(c)(2)(B), 306(g) and 312 of the Act which have to do with a continuing State-local consultation mechanism, changes to approved management programs, and termination and withdrawal of funding of approved management programs.

On August 29, 1977, NOAA published proposed revisions to the above-referenced regulations. Written comments were requested by October 28, 1977. Comments were received from 14 State reviewers, 10 Federal agencies, 11 industrial groups, 2 environmental groups, and 3 miscellaneous reviewers. These comments have been considered in preparing these regulations.

DISCUSSION OF MAJOR ISSUES AND NOAA RESPONSE

Below is a discussion of the more major comments and changes to these regulations. This is followed by a section-by-section discussion of other comments received.

RELATIONSHIP OF 15 CFR PART 920 TO 15 CFR PART 923

A number of reviewers felt it was confusing and, in some cases, contradictory to indicate that the program development regulations (15 CFR Part 920) were incorporated into the program approval regulations (15 CFR Part 923) and, yet, that where there were differences, the Part 923 regulations control. In order to avoid any confusion, Subparts A-D of the Program Development (15 CFR Part 920) Regulations dealing with the requirements of subsection 305(b) of the Act are superseded by the requirements contained herein, especially Subpart A-E. The preliminary approval sections (Subpart E) of the Program Development Regulations have been incorporated herein as §§ 923.74-923.77 with only minor changes. The grant application procedures (Subpart F) for section 305 grants of the Program Development Regulations have been incorporated herein as part of Subpart J, especially §§ 923.96 and 923.97, again with only minor changes. Accordingly, reference no longer need be made to the Program Development Regulations (15 CFR Part 920).

GENERAL REQUIREMENTS

A few reviewers felt that the regulations did not reflect adequately a basic thrust of the Act—the preservation of unique, vulnerable or valuable coastal resources. While NOAA feels this thrust was reflected adequately in previous regulations § 923.3 has been rewritten to reaffirm this basic purpose of the Act.

ENERGY FACILITY PLANNING

Several reviewers felt that the proposed energy facility planning requirements did not reflect adequately the relationship between this planning element and national interest considerations required pursuant to subsection 306(c)(8) of the Act. Section 923.14, especially § 923.14(a)(4), has been revised to reflect this relationship. A number of other deletions and additions (from 15 CFR 920.18) have been made in response to other comments on this section. These changes are discussed below in the section-by-section analysis of changes.

INLAND BOUNDARY

Comments were received suggesting the approach taken to determining the inland boundary (in § 923.31) would yield an inland boundary larger

than that intended by Congress. Conversely, a number of comments were received that the inland boundary should be larger than that provided for in § 923.31 to ensure fulfillment of the Act's purposes. NOAA has reviewed the Act and legislative history, and has determined that the present interpretation contained in § 923.31 is a correct and reasonable one. Accordingly, the basic requirements of § 923.31 remain unchanged. Minor changes to this section, for the purpose of further clarification, are discussed in the section-by-section analysis that follows.

Treatment of Local Programs

A couple of reviewers objected to the possibility provided in these regulations (in § 923.42) that State management programs could be approved in advance of completion of local implementation programs (where a State will use the control technique provided by subsection 306(e)(1)(A) of the Act) on the basis that the State program would not provide sufficient specificity to guide those affected by the program as to permissible uses or geographic areas of particular concern. A number of other reviewers maintained that all local programs developed and approved after NOAA approval of a State's program always must be treated as amendments to the State's program.

The present regulations are a resonable interpretation of the requirements of the Act and provide adequate safeguards (in §§ 923.3(a)(2) and 923.42(c)(4)(iii)) to assure sufficent specificity in any State program approved by the Assistant Administrator (prior to local program completion) so that those affected by the program will know how and where they are affected.

With respect to how local programs are incorporated into a State's program, NOAA does not agree that local programs would constitute amendments in all cases. Whether or not such programs would constitute amendments (as opposed to refinements) would depend on whether these programs would result in substantially different, significant environmental impacts or substantially different intergovernmental relationships from the State's approved management program. This determination is best left to a case-by-case determination as provided for in § 923.80(c). However, to assure that there is adequate opportunity for the public, affected parties, and governmental entities to provide input to and review of local programs before they are approved by the State (which appears to be the major concern of those commentators who perfer to treat incorporation of local programs as amendments), a new § 923.42(c)(4)(ii) has been added to assure such opportunities are provided.

Incorporation of Air and Water Quality Requirements

Several commentators expressed concern with the comment in § 923.44(c)(4) which informed States that if they adopted, pursuant to the Federal Water Pollution Control Act and the Clean Air Act, pollution control standards which are more stringent than those provided for in these Federal Acts, those more stringent standards must be incorporated in the management program, and that incorporation of these standards would be a legitimate factor in adequately considering the national interest in siting of facilities which are more than local in nature. The reviewers were concerned that some States would use these stricter pollution control requirements to preclude or restrict unreasonably the siting of energy facilities which otherwise may be in the national interest. This section has been rephrased to remind States that if they have such stricter standards, these must be incorporated pursuant to subsection 307(f) of the Act, but to clarify that the Act does not mandate stricter standards. The position of requiring States which have adopted more stringent standards to incorporate them into their management programs is based on a careful reading of the legislative history of subsection 307(f) of the Act, and is supported by the Environmental Protection Agency. Because this section produced a large number of comments, and because there are cogent arguments on either side, NOAA particularly invites further comment on this section.

National Interest

Several reviewers objected to the national interest being characterized in terms of "resources" as well as "facilities" and further objected to a balancing of these various "national interests." A number of these reviewers further suggested that subsection 306(c)(8) required that facilities be accommodated in the coastal zone and that assurance be provided that local regulations do not unreasonably exclude or restrict uses of regional benefit, especially when these uses involve energy facilities.

NOAA response. NOAA maintains that the requirement of subsection 306(c)(8) of the Act for adequate consideration of the national interest in the planning for and siting of facilities that are necessary to meet more than local requirements must be met within the overall context of the Act. As described in the legislative history, the purpose of "adequate consideration" is to achieve the act's "spirit of equitable balance between State and national interests." As such, consideration of facilities in which there may be a national interest must be undertaken within the context of the Act's broader finding of a "national interest in the * * * beneficial use, protection, and development of the coastal zone" (Section 302(a)). Subsection 302(g) of the Act gives "high priority" to the protection of natural systems. Accordingly, while the primary focus of subsection 306(c)(8) is on the planning for and siting of facilities, adequate consideration of the national interest in these facilities must be based on a balancing of these interests with other national and State interests relative to the wise use, protection and other development of the coastal zone. As the Department of Energy noted in its comments on the proposed regulations:

> The Act presumes a balancing of the national interest of energy self-sufficiency with State and local concerns involving adverse economic, social, or environmental impacts.

However, in recognition of commentators' concerns that proposed § 923.52 does not clearly identify the need to focus on facilities in which there may be a national interest, § 923.52 has been revised to clarify that the purpose of the requirements contained in this section are to assure that facilities in which there is a national interest are considered in (1) the development of the State's management program, (2) the review and approval of a State's program by the Assistant Administrator, and (3) the implementation of the program. Other changes have been made to this section to further emphasize the focus on facilities, including separation of the tables, one dealing with facilities, the other dealing with resources.

With respect to the comment that assurance must be provided that local regulations do not unreasonably exclude or restrict uses of regional benefit when these uses involve energy facilities, NOAA notes that these commentators have confused the requirements of subsection 306(c)(8) of the Act with subsection 306(e)(2) of the Act. Subsection 306(c)(8) calls for "adequate consideration" which is not synonomous with assuring that provision be made to assure the siting of energy facilities in which there is a national interest. The requirement to assure local regulations do not unreasonably restrict or exclude uses of regional benefit is a separate and distinct requirement pursuant to subsection 306(e)(2) of the Act. As § 923.13 of these regulations points out, States should define uses of regional benefit based on (1) their effect on more than one unit of local government, and (2) direct and significant impacts on coastal waters. Effect may be considered to be of a multi-county or intrastate nature. Accordingly, facilities in which there is a national interest need

not necessarily be defined as uses of regional benefit. However, as § 923.13(d) points out, where States do define uses of regional benefit to include facilities in which there is a national interest, then assurance must be provided that local regulations do not unreasonably restrict or exclude such uses.

REVIEW OF PERFORMANCE

A number of commentators objected to proposed § 923.91 as being too vague and not providing enough specificity as to the criteria and procedures to be used to review performance of States once their management programs are approved. NOAA agrees that more detail on performance review after program approval can and should be provided. Moreover, NOAA feels that these requirements can be better handled as separate regulations since these are required pursuant to section 312 of the Act and are not requirements of program approval pursuant to section 306 of the Act. Accordingly, § 923.91 of the proposed regulations has been dropped from these regulations and will be treated in separate regulations which NOAA will first issue in proposed form to allow adequate opportunity for review and comment.

CHANGES TO APPROVED PROGRAMS

In response to a number of questions and suggestions, proposed § 923.90 (now § 923.80) has been rewritten and expanded to provide examples of items that would constitute changes to an approved management program and to clarify differences in review and approval procedures depending on whether the change is an amendment or a refinement. Proposed §§ 923.92 and 923.93 (now §§ 923.81 and 923.82, respectively) also have been revised to further specify and clarify the procedures for amending or refining, respectively, the management program.

SECTION-BY-SECTION ANALYSIS

SUBPART A

(a) *Section 923.1—Purpose.* Four commentators suggested that differences between the 15 CFR Part 920, and 15 CFR Part 923 regulations be identified and resolved.

NOAA response. See discussion under major changes of the relationship of 15 CFR Part 920 to 15 CFR Part 923.

(b) *Section 923.2—Definitions.* (1) One commentator suggested the terms "direct and significant impacts," "special management," and "special management areas" be defined.

NOAA response. NOAA feels these terms are already sufficiently explained in §§ 923.31(d) and 923.21 respectively, and need not be further defined in this section.

(2) One reviewer suggested that "shorelines" be defined as the coastlines of the several States as defined in the Submerged Lands Act.

NOAA response. NOAA does not feel this suggested definition is appropriate. There is no indication that Congress intended to interpret "shorelines" synonymously with the term "coastline" as defined in the Submerged Lands Act. In fact, the legislative history suggests that "shoreline" was used synonymously with "coastal zone" and that Congress' attention was to a coastal area, in which a variety of competing uses took place, not on the "line" itself.

(3) One commentator suggested defining "water dependency."

NOAA response. NOAA does not feel this necessary or appropriate as such definition is better left to each State as it feels appropriate given the specifics of its management program.

(4) Three commentators suggested the addition of the Department of Energy and the deletion of component agencies.

NOAA response. All references to the Energy Research and Development Administration, the Federal Energy Administration, and the Federal Power Commission, have been deleted and the Department of Energy has been substituted.

(5) One reviewer suggested that "pollution abatement and control" be included in § 923.2(d) as one of those activities which impact or affect a State's coastal zone.

NOAA response. This suggestion has been accepted.

(6) One reviewer suggested the addition of the Department of State to the list of relevant agencies.

NOAA response. NOAA has not accepted this suggestion. For one, it did not come from the Department of State. For another, "relevant agencies" are those that need to be involved extensively in program development and program review. It is not normally essential for the Department of State to be involved extensively in such activities. Moreover, § 923.2(e) makes provision for the inclusion of the Department of State when such involvement is warranted.

(7) One commentator suggested a clarification in the definition of the term "Secretary" to note that, for mediation purposes, the authority remains in the Office of the Secretary.

NOAA response. Section 923.2(b) has been so clarified.

(8) One commentator found the terms "fields" of interest, "types of uses," "uses subject to the management program," "areas of particular concern," "facilities in which there may be a national interest," and "resources in which there may be a national interest" which are cited in §§ 923.2, 923.10, 923.12, 923.14, 923.21, 923.50, and 923.52 respectively to be repetitive and overlapping.

NOAA response. NOAA disagrees that these terms are repetitive and overlapping. They refer to different aspects of program management and are explained sufficiently in each of the respective sections cited above.

(c) *Section 923.3—General Requirements.* (1) Two reviewers suggested that NOAA should require that a State's program provide for management of all uses with direct and significant impacts on coastal waters, not just those a State has determined make its coastal zone a unique, vulnerable or valuable area. One of these reviewers also felt the regulations should specifically affirm in this section that management programs must provide a planning process for managing the impacts of energy facilities and for the consideration of the national interest. The other reviewer felt that NOAA should provide that management programs assure the preservation and protection of coastal resources consistent with the basic conservation purposes of the Act.

NOAA response. With respect to the first comment, § 923.3 (especially (g)) has been revised to assure that management is provided for those uses with direct and significant impacts on coastal waters.

With respect to the second comment, NOAA does not feel it necessary to mention specifically in this section the requirements to provide an energy facility planning process and to consider adequately the national interest as these already are provided for in §§ 923.14 and 923.52 respectively.

With respect to the third comment, NOAA has addressed this issue in the discussion of general requirements under major changes, above.

(2) One commentator suggested the word "comprehensive" be deleted from the description of the management program in paragraph (a)(1) as this commentator found no statutory basis for the requirement.

NOAA response. The word "comprehensive" appears as part of the definition of the term "management program" in section 304(11) of the Act. Accordingly, no change has been made to this paragraph.

(3) Five reviewers objected to paragraph (b) suggesting that the wording is open to controversy and is not in conformance with the Act.

NOAA response. NOAA agrees that the wording of this paragraph may be confusing and is not essential for program approval purposes. Accordingly, paragraph (b) of the proposed regulations has been deleted.

(4) One reviewer suggested that the requirement for three broad classes of policies in proposed paragraph (e) (now paragraph (f)) be deleted, as this reviewer felt inclusion of this requirement would lead to a program of broad land use controls. Two commen-

tators suggested this paragraph be revised to indicate that State management programs should address endangered species and marine mammals and their needs. One of these commentators also suggested adding OCS development and mineral extraction to the examples of development policies to be addressed in management programs. Another reviewer objected to the implication of this paragraph that the priority given different issues would be left to the States. This reviewer felt the regulations should indicate clearly that the scope and priority given these issues would be evaluated by the Assistant Administrator prior to granting approval.

NOAA response. With respect to the first comment, NOAA believes the three broad classes of policies (having to do with resources, coastal development and governmental processes) are necessary to address the findings and policies of sections 302 and 303 of the Act. However, NOAA has not stipulated the specific policies that are appropriate within these broad groupings as this is the responsibility of the State, working in consultation with interested and affected parties, including the general public. In further response to the reviewer's concern that inclusion of these three groupings would lead to broad land use controls, it should be noted that the examples provided, of appropriate subjects for policies, are coastal specific. To further emphasize the coastal aspect of these management policies, group (2) in paragraph (f) has been retitled "Coastal Development Policies."

With respect to the second comment, paragraph (f)(1) has been revised to include "* * * areas containing fishery, spawning, and harvesting grounds, other wildlife habitats including those of endangered species * * *" as examples of resources that should be considered under the Resource Policies grouping.

With respect to the third comment, paragraph (f)(2) has been revised to include "* * * mineral extraction, onshore OCS-related development * * *" as examples of development that should be considered under the Coastal Development Policies grouping.

With respect to the fourth comment, paragraph (g) provides that "the Assistant Administrator will review management programs to ensure that major coastal resources * * * are addressed by appropriate policies in the program."

(5) Three commentators urged that proposed paragraph (f) (now paragraphs (i)-(k)) be expanded to provide more guidance to States on meeting the mandates of Presidential Executive Orders on wetlands protection and floodplain management. A fourth commentator concurred, advocating that barrier islands also be included. Two reviewers suggested a revision to clarify that the Wetlands Order does not apply to the issuance by Federal agencies of permits, licenses or allocations to private parties for activities involving wetlands on non-Federal property. Two other commentators requested further discussion of means to incorporate and coordinate the mandates of the Orders with the national flood insurance program.

NOAA response. With respect to the first comment requesting further guidance on complying with the Executive Orders, OCZM is working with the Environmental Protection Agency, the Corps of Engineers, and the Federal Insurance Administration to develop the guidance requested. OCZM hopes to have this guidance ready for inclusion in these regulations at the time of their issuance as Final Regulations. Alternatively, OCZM will issue guidance papers separate from these regulations if the necessary information is not available at the time of issuance of Final Regulaltions.

With respect to the second comment, NOAA has not added a reference to barrier islands in these paragraphs because barrier islands are not addressed in the two Executive Orders cited in paragraphs (i)-(k). However, NOAA has added reference to barrier islands in paragraph (f)(1) as an example of a resource to be considered under the Resource Policies grouping.

With respect to the third comment, NOAA does not feel it necessary to clarify in these paragraphs Federal responsibilities under the Wetlands Executive Order as this section is addressed to State, not Federal, responsibilities pursuant to these Orders.

With respect to the fourth comment, NOAA has not provided additional discussion of means to coordinate with the national flood insurance program because of uncertainty at the time of issuance of these regulations of whether or how the national flood insurance program will be altered by the Executive Order on floodplain management. NOAA is working with the Federal Insurance Administration to develop an interagency agreement which will address interrelationships between the coastal zone management and the flood insurance programs.

SUBPART B

(a) Three reviewers objected that Subpart B did not treat uses subject to management as comprehensively as subsections 306(c)(8) and 306(e)(2) of the Act require, and suggested that this Subpart should expressly require State programs to provide for the requirements of those two subsections of the Act.

NOAA response. NOAA does not feel the objection of the reviewers is valid as the requirements of the two subsections of the Act cited above already are addressed in individual sections of the regulations (§§ 923.52, 923.13, and 923.43 respectively).

(b) *Section 923.10—General.* One commentator suggested this section should be revised to address coastal waters, consistent with the language of the Act, and not the broader reference to coastal resources, as proposed section 923.10 provides.

NOAA response. Section 923.10 has been revised as per the suggestion above.

(c) *Section 923.11—Uses Subject to Management.* (1) One commentator suggested the addition of the words "within the coastal zone which have a direct and significant impact on coastal waters."

NOAA response. NOAA finds these words unnecessary and redundant and therefore has made no change.

(2) One reviewer felt that the suggested analyses in paragraphs (b) and (c) would involve studies so complex that it would be years before they were completed. In contrast, three reviewers felt that these analyses are critical to program development and therefore should be made a requirement for program approval.

NOAA response. While NOAA agrees that the inventories suggested in paragraph (b) and the analyses suggested in paragraph (c) are useful to program development, NOAA does not feel these inventories and analyses are the sole means of arriving at a determination of uses that should be subject to the management program. Moreover, NOAA cannot find any statutory language that would require such inventories and analyses be made mandatory. In response to the first reviewer's concern, the fact that these studies are recommended, and not required, should alleviate some of the concern about the amount of time required to complete these studies. Moreover, it should be noted that many of the States involved in the coastal program development process, in fact, have been able to complete the recommended inventories and analyses in less than the numerous years anticipated by the first reviewer.

(3) Two commentators suggested that the analyses recommended in paragraph (c) should be limited to impacts on coastal waters and not on coastal resources as the proposed paragraph provides. Another reviewer suggested that this paragraph be clarified to apply to uses with direct and significant impacts on coastal waters before they can be subject to the management program. A third commentator suggested that the list of uses be considered a minimum.

NOAA response. With respect to the first comment, paragraph (c) has been revised as per the suggestion above.

With respect to the second comment, paragraph (c) already explicitly

refers to direct and significant impacts as a basis for determining whether uses are to be subject to the management program.

With respect to the third comment, NOAA has not adopted the suggestion that the list of uses be considered a minimum requirement as this paragraph is a recommendation and not a requirement. As another commentator noted, in connection with another section, "at a minimum" implies a requirement and therefore is inappropriate in a commentary.

(4) A number of commentators suggested the following changes to the list of uses contained in paragraph (c):

(i) Deletion of the words "such as subdivisions, high-rise apartments or hotels, trailer parks, second-home developments, shopping centers, and associated transportation corridors" from paragraph (c)(1);

(ii) Deletion of the words "manufacturing complexes, industrial parks" and addition of the word "marine" to "mineral and sand extraction operations" in paragraph (c)(2);

(iii) Deletion of the words "schools, hospitals, government buildings" from paragraph (c)(4); and

(iv) Addition of transportation facilities as a separate paragraph.

NOAA response. With respect to the first two comments, NOAA has not made the suggested changes because the items listed are illustrative and clarify the sorts of analyses that may be appropriate for program development.

With respect to the third suggestion, NOAA has deleted the recommended words because it feels, on reconsideration, that those examples do not provide further understanding of the recommended analyses.

With respect to the fourth comment, NOAA has added a new paragraph (5) covering transportation facilities. Because of this addition, "associated transportation facilities" has been deleted from paragraph (c)(1).

(5) Two commentators suggested, in connection with paragraph (d), the Assistant Administrator should consider whether major coastal issues, raised by the public or governmental entities, are addressed through existing programs as well as through the State's coastal management program. Another reviewer suggested the term "major coastal-related issues" in paragraph (d) should be clarified.

NOAA response. With respect to the first comment, no change has been made because the regulations already allow for and anticipate the incorporation of existing programs as elements of a State's management program.

With respect to the second comment, NOAA has added language to paragraph (d) to indicate that the significance of issues raised by the public or governmental entities will be judged in terms of their relationship to the findings and national policies of sections 302 and 303 of the Act.

(d) *Section 923.12—Use Permissibility.* (1) Two commentators suggested that this section did not meet the requirements of the Act in only requiring development of "policies and procedures" for definition of permissible uses while subsection 305(b)(2) of the Act mandates a more detailed definition. In contrast, another reviewer suggested that the requirement for policies and procedures by which uses subject to the management program will be allowed, conditioned, modified or prohibited be deleted.

NOAA response. The first two commentators have misunderstood how the regulations address the requirements of subsection 305(b)(2). Section 923.11(a)(1) requires an identification of permissible uses (i.e., uses that will be subject to the management program) which is a partial fulfillment of the requirement of subsection 305(b)(2). Language has been added to § 923.11(a)(1) to indicate clearly this is in fulfillment of the requirement of that subsection of the Act. Once uses have been determined to be subject to the management program, pursuant to § 923.11, then States must determine how they will be managed (i.e., allowed, conditioned, modified, or prohibited) which is the requirement of § 923.12. NOAA feels, in response to the suggestion that this requirement be deleted, that it is reasonable in view of the language of the Act and logical in terms of what a management program should contain.

(2) One reviewer felt that the distinction between "uses subject to the management plan" and "permissible uses with direct and significant impacts" had been blurred and that this distinction needed to be maintained since only uses with direct and significant impacts need to be managed by regulatory techniques.

NOAA response. While NOAA agrees that not all uses subject to the management program need be managed by regulation, NOAA does not agree with the commentator's analysis. NOAA believes that uses that must be subject to the management program are those with direct and significant impacts on coastal waters. The issue of the appropriate management technique (e.g., regulation versus technical or financial assistance) is a separate issue, and is dealt with in § 923.3(h).

(3) With respect to paragraph (c), the following recommendations were made:

(i) One reviewer felt the suggested analyses were overly complicated. Another reviewer objected to consideration of capability/suitability analyses for all uses, maintaining that the earlier program approval regulations required these analyses only for geographic areas of particular concern. In contrast, two reviewers felt these analyses should be required;

(ii) The considerations suggested in paragraphs (2)–(5) all should include reference to future, as well as present, considerations;

(iii) The words "resource types" and "coastal resources" in paragraphs (1) and (2) respectively should be replaced with the words "resources of the coastal waters";

(iv) The word "coastal" should be replaced with the word "water" in the term "coastal dependency" in paragraph (5);

(v) Paragraphs (2) and (4) should be deleted; and

(vi) A paragraph (6) should be added requiring the policies and procedures (called for in paragraph (a)) to be based on other existing regulatory programs.

NOAA response. With respect to the first set of comments, NOAA does not agree that these analyses are overly complicated. Moreover, it should be noted that these analyses are recommended but not required. In response to the comments that these analyses should be required, NOAA does not believe that these are the sole means for determining use permissibility. Moreover, NOAA does not find any statutory language that would require such analyses be made mandatory.

In response to the second comment, it is not necessary to add reference to future considerations as such a reference already can be found in paragraph (1). Moreover paragraphs (1)–(5) should not be considered mutually exclusive but complementary.

In response to the third comment, NOAA does not feel it necessary or appropriate to substitute "resources of the coastal waters" for "resource types" or "coastal resources."

With respect to the fourth comment, NOAA has made the recommended change.

With respect to the fifth comment, NOAA does not feel it necessary or appropriate to delete paragraphs (2) and (4) as these are suggestions, not requirements, that are worth calling to the attention of the States.

In response to the sixth comment, NOAA does not feel it necessary to add the additional paragraph as the regulations already allow for reliance on other existing regulatory programs as elements of a State's management program.

(4) With respect to paragraph (d), the following comments were received:

(i) The factors listed in paragraphs (1)–(5) are inadequate, and full range of environmental impacts must be considered, including cumulative and long-range impacts;

(ii) Economic development and energy self-sufficiency should be included as factors for consideration; and

(iii) The listed considerations have no statutory basis, are not necessary to control impacts, and many of these considerations are properly addressed by non-regulatory aspects of the program.

NOAA response. In response to the first comment, NOAA feels that the factors listed do cover a full range of environmental impacts. Moreover, it should be noted that the considerations listed in paragraphs (1)–(5) are illustrative and non-inclusive. Accordingly, States are in no way precluded from considering cumulative and long-range impacts.

In response to the second comment, reference to energy has been added to paragraph (5).

In response to the third comment, NOAA again notes that these analyses are recommended and not mandated. They are offered as suggestions to States as to how to meet the requirements of paragraph (a).

(5) One reviewer suggested that since the Act mandates definition of permissible uses, if performance standards are to be relied upon (as provided for in paragraph (d)), the regulations should specify that uses can be prohibited through the application of these standards. Another reviewer felt the performance standard approach held good potential and that the discussion should be expanded.

NOAA response. The requirement to define uses subject to the management program is contained in § 923.11, not in this section. As noted in an earlier response, § 923.11 has been so clarified. Performance standards represent one means of specifying how uses are to be managed once they are determined to be subject to the program. The term "management" is not and need not, for purposes of the Act, be synonymous with "prohibition." Accordingly, NOAA does not agree with the comment above that performance standards must be capable of prohibiting uses in all cases.

With respect to the second comment, NOAA has nothing further to add at this time regarding the use of performance standards to meet the requirements of this section and thus has not expanded the discussion.

(6) One reviewer suggested that paragraph (d)(2) would be more effective if reworded to read: "Historic, cultural, and aesthetic resources where coastal development is likely to affect these resources." This same reviewer also suggested rephrasing paragraph (d)(4) to include consideration of all species that depend upon the coastal zone during at least a portion of their life cycle.

NOAA response. NOAA has adopted the suggested rewording of paragraph (d)(2) but has not made the recommended change to paragraph (d)(4) as the existing language appears broad enough.

(7) One commentator suggested that the comment in paragraph (e) regarding performance standards was unnecessarily limiting. If a State can manage activities with direct and significant impacts via performance standards, the requirement to specify directly such uses seems inappropriate.

NOAA response. Again this commentator appears to have confused the requirements of § 923.11 with § 923.12. As noted earlier, they are separate requirements. Accordingly, paragraph (e) remains unchanged.

(e) *Section 923.13—Uses of Regional Benefit.* (1) A number of reviewers in commenting on other sections of these regulations made comments that are most appropriately addressed in a discussion of this section. These commentators suggested that uses of regional benefit must be defined, at a minimum, to include, energy facilities in which there is a national interest.

NOAA response. First, it should be noted that the present regulations provide that States may define uses of regional benefit in terms of facilities (including energy facilities) in which there may be a national interest. It also should be noted that this is not mandatory but one of several options available to States in meeting the requirements of subsection 306(e)(2) of the Act. Moreover, NOAA finds nothing in the language of the Act or the legislative history to imply that subsection 306(c)(8) (which deals with consideration of facilities in which there is a national interest) and subsection 306(e)(2) (which deals with uses of regional benefit) were intended to be linked together and made to represent a single requirement. Nor does NOAA find any language to preclude such linkage if States desire to do so. Accordingly, NOAA has left it up to States whether or not to define uses of regional benefit in terms of facilities in which there is a national interest.

(2) One reviewer suggested that the requirements of paragraph (a) be eliminated.

NOAA response. NOAA believes the requirements of paragraph (a) represent a reasonable interpretation of the statutory requirement of subsection 306(e)(2) of the Act. As a statutory requirement, it cannot be eliminated except by Congress.

(3) One commentator suggested that this section fails to implement the statutory requirement of subsection 306(e)(2) of the Act by not providing adequate guidance as to what uses might be of regional benefit and how States might assure that local regulations do not unreasonably restrict these uses. Relatedly another reviewer felt there was not a clear definition of uses of regional benefit while two other reviewers suggested the list of options be expanded or, at least, be made non-inclusive. Another reviewer suggested that the three sources suggested in paragraph (c) for identifying uses of regional benefit must all be used to determine such uses. Still another reviewer suggested that the second and third alternative, where uses of regional benefit may be defined as facilities in which there are national interests, should be justified as the latter is a separate and distinct requirement of the Act. The same reviewer suggested that the first option could be broadened by referencing planning programs of other Federal agencies.

NOAA response. In response to the first three comments, what was paragraph (c) and is now paragraph (d) has been expanded to provide further guidance as to how States might define uses of regional benefit. Section 923.43 already contains guidance as to how States might assure local regulations do not unreasonably restrict these uses. A clarification to this effect has been added to new paragraph (c) of this section.

With respect to the fourth comment, NOAA does not agree that all sources listed in paragraph (d) must be used to determine uses of regional benefit. NOAA feels that suggesting alternative approaches to States is a reasonable and logical response to meeting the requirement of the Act.

With respect to the fifth comment, as noted in an earlier response, nothing in the statute appears to prohibit defining uses of regional benefit in terms of facilities in which there is a national interest. NOAA does agree with this commentator that consideration of facilities, in which there is a national interest, is a separate requirement. Accordingly, the approach is optional and not mandatory.

Finally, NOAA has followed the recommendation of this reviewer and has made reference to other Federal programs in paragraph (d).

(4) One reviewer felt there was a certain amount of confusion between this section and related § 923.43 and objected to the physical separation of these requirements in the regulations.

NOAA response. Paragraph (c) has been added to clarify the relationship between this section and § 923.43.

(f) *Section 923.14—Energy Facility Planning Process.* (1) Several reviewers made comments on this section which are more appropriate to the discussion of national interest in § 923.52. Accordingly, those comments are analyzed in the discussions under § 923.52.

(2) Two reviewers suggested that the regulations specifically commit States to the siting of energy facilities through this process. Conversely, one commentator suggested it be noted that subsection 305(b)(8) of the Act was not enacted to encourage the siting of energy facilities in the coastal zone. Relatedly, five reviewers object-

ed to the reference in paragraph (c) that encourages States to employ site specific control techniques, and noted that Congress specifically forbade intercession in specific siting decisions.

NOAA response. NOAA agrees with the commentators who note that Congress did not intend to encourage the unnecessary siting of energy facilities in the coastal zone. To wit, the Committee Report on the 1976 Amendments to the Act noted: "The Committee in no way wishes to accelerate the location of energy facilities in the coasts: on the contrary, it feels a disproportionate share are there now." However, that same report states that "State coastal zone programs *should*, therefore, specifically address how major energy facilities are to be located in the coastal zone if such siting is necessary. Second, the program shall include methods of handling the anticipated impacts of such facilities." (Emphasis added.) Accordingly, in response to the first comments, NOAA does not read the legislative history to mandate energy facility siting but rather to encourage articulation of locational and environmental considerations that will influence energy siting decisions. Similarly, in response to the second comment, NOAA does not believe that the present requirements encourage location of energy facilities in the coastal zone but rather require a clear articulation of how energy facility impacts are to be managed. Finally, in response to the last set of comments, NOAA agrees that Congress did not intend for intercession into specific siting decisions; to wit, the Committee statement that it "wishes to emphasize * * * that this new paragraph (8) requires a State to develop, and maintain a planning process, but *does not imply intercession in specific siting decisions.*" (Emphasis added.) Again, NOAA does not feel the initial comments in paragraph (c) to which reviewers object are directed towards intercession in specific siting decisions but rather articulation of site considerations that need to be taken into account in order to manage impacts from energy facilities.

(3) A number of reviewers suggested changes or additions to the requirements of paragraph (a) as follows:

(i) Include all energy-related activities in this planning process;

(ii) Add a requirement for trade-offs of energy-related natural resources against other non-energy resources;

(iii) Identify potential demands and impacts on coastal resources from energy facilities;

(iv) Expand paragraph (a)(2) to take into account alternative sites and to include consideration of ecological, cultural, historic, and aesthetic values as well as needs for enocomic development;

(v) Include members of the energy facility community in the consultation requirement of paragraph (a)(4); and

(vi) Include specific mention of Federal and State fish and wildlife agencies for consultation purposes in paragraph (a)(4).

NOAA response. In response to the first comment, NOAA believes States need include in the planning process only those energy facilities defined in section 304(5) of the Act. However, NOAA also believes it reasonable to allow States, at their option, to include additional energy-related activities, as suggested by the first commentator, in this planning process. Paragraph (d), which is incorporated from 15 CFR 920.18(b)(2), reflects this discussion above.

In response to the second comment, NOAA is not sure how the recommended addition would contribute to a State's ability to manage impacts from energy facilities. In any case, NOAA does not believe that such trade-offs as suggested by the commentator are precluded by the present regulations.

With regard to the third comment, NOAA is not sure that identification of potential demands on coastal resources is a necessary requirement to develop a process for managing impacts from energy facilities. Again, NOAA does not believe the present regulations preclude the analyses suggested by the commentator.

With respect to the fourth comment, NOAA believes paragraph (f) (which is incorporated from 15 CFR 920.18) addresses the concerns of the commentator.

Finally, with respect to the fifth and sixth comments, paragraph (a)(4) has been revised to reference "interested and affected public and private parties" which includes the energy facility community and the fish and wildlife agencies referred to by the commentators.

(4) Two commentators objected to suggestions in the commentary in paragraph (c) which they believe displays a bias against nuclear and other energy facilities. Relatedly, two other reviewers suggested the commentary accomplished little in advising States on planning for energy facilities and suggested paragraph (c) be deleted. Another reviewer felt reference to 15 CFR 920.18(b)(1) would eliminate the need for most of paragraph (c).

NOAA response. NOAA wishes to go on record as not being biased against nuclear or other energy facilities. NOAA is committed to the mandate of the Act to provide for the development as well as the preservation of the coastal zone and its resources. NOAA believes this mandate is achieved through a balancing of developmental and preservation considerations. it is this concept of balancing that was intended to be conveyed in the commentary of paragraph (c) and certainly not any bias against energy facilities. However, NOAA has deleted most of paragraph (c) in response to the second set of commentators and to remove any hint of bias because it feels the addition of the 15 CFR 920.18 commentary (as paragraphs (d)-(i)), is more specific than that provided in proposed paragraph (c) and therefore more helpful to States in developing the required planning process.

(5) One reviewer suggested the regulations clarify that prior to identification of sites, States should consult with appropriate Federal and local government officials and the public.

NOAA response. As indicated in an earlier response, site identification, per se, is not a required part of the planning process. In any case, though, revised paragraph (a)(4) provides for "an identification of how interested and affected public and private parties may be involved in the planning process."

(6) One reviewer suggested that paragraph (c) clarify that areas of particular concern designated for ecological reasons be reserved exclusively for the purposes for which designated. This commentator also suggested that the list of other facilities or resources of national interest be expanded to include historic and cultural resources and that the "should" in the second to last sentence of paragraph (c) be changed to "must."

NOAA response. While the sections of paragraph (c) to which these changes are addressed have been deleted, NOAA, in any case, believes that the first suggestion is implied in paragraph (a)(2) and the remaining portions of paragraph (c).

(7) One commentator suggested including a variance provision that would allow the waiver of process requirements in cases where national energy needs outweigh resource and conservation concerns.

NOAA response. NOAA does not believe this is a necessary requirement for fulfilling the Congressional intent in adding this planning process. Neither does NOAA feel that adoption of such a provision by States is precluded by the present regulations.

(8) One commentator suggested the addition of a discussion indicating how this planning element and that provided in the Coastal Energy Impact Program (CEIP) (15 CFR Part 931) might be coordinated.

NOAA response. Paragraph (g), adapted from 15 CFR 920.18(b)(6), addresses some of these interrelationships.

(9) Finally, one reviewer objected to the statement in proposed paragraph (e), now paragraph (j), that State programs could be approved without completion of this element and suggested that the first sentence of this paragraph be deleted.

NOAA response. In reviewing the legislative history and the language of

subsection 305(b)(9) of the Act, NOAA is convinced that Congress intended that State programs approved prior to October 1, 1978, have until that date to meet the three new planning elements. Accordingly, the recommended change has not been made to paragraph (j).

SUBPART C

(a) *Section 923.20—General.* One commentator suggested that this section should indicate that the philosophy that should govern the designation of special management areas is the protection and preservation of valuable coastal ecosystems. Conversely, one reviewer felt that the regulations evidenced a preservation bias in uses permitted in designated areas of particular concern. A third commentator suggested that States be required to address the problem of dredge spoil disposal areas for maintenance dredging.

NOAA response. With respect to the first two comments, while NOAA agrees that the majority of special management areas probably will be designated for conservation reasons, neither the Act nor these regulations preclude the designation of areas for special management because of their development potentials or values.

With respect to the third comment, NOAA can find no authority in the Act or legislative history to mandate the designation of dredge spoil areas. However, NOAA has added these for consideration for designation to paragraph (d) of § 923.21.

(b) *Section 923.21—Areas of Particular Concern.* (1) Three reviewers objected to generic designations of areas of particular concern, suggesting that all designations must be site-specific. Relatedly three reviewers suggested the reference to mapping in paragraph (d)(4) should be a requirement for specific (rather than generalized) mapping. By contrast one reviewer objected to what it interpreted to be a requirement for site-specific designations.

NOAA response. NOAA believes the present regulation allowing for generic as well as site-specific designations to be reasonable and not precluded by the Act or legislative history. An example is provided to demonstrate the potential utility and reasonableness of allowing generic designations: Assume State "X" determines that all its salt marshes are of particular concern for their natural values. State "X" determines that the most appropriate means of providing special management for its salt marshes is to institute a separate permit requirement for any development activity proposed in coastal marshlands. In this case, the areas affected, the nature of the concern, and the nature of the special management can be reasonably understood by all affected parties through generic designation in the management program.

(2) One reviewer suggested that the regulations clarify that designation of areas of particular concern may involve no additional enforceable authorities but rather increased coordination, technical assistance, or public expenditures. Another reviewer suggested that the requirement of paragraph (a)(3) for enforceable policies and authorities be deleted. In contrast, one commentator suggested that States be required to demonstrate how enforceable policies and authorities will solve concerns in a manner consistent with the conservation purposes of the Act.

NOAA response. In response to all three comments, NOAA has revised paragraph (a)(3) to require a demonstration of "how the management program addresses and resolves the concerns for which areas are designated." This has the effect of recognizing the first commentator's suggestion that effective management may involve other than regulation, of deleting the reference to enforceable policies as suggested by the second commentator, and of including the third commentator's recommendation that the management techniques should be appropriate to the reason for designation. It should be noted, however, that this revision does not require a demonstration of consistency with the conservation purposes of the Act, as the third commentator suggested, since NOAA believes designations may be for other purposes which would be equally consistent with the Act. Finally, NOAA believes the first commentator's recommendation is equally applicable to other areas of particular concern discussed in § 923.23, and accordingly has added language along the lines suggested to § 923.20 which includes general information applicable to all the sections of this Subpart.

(3) Three reviewers objected to the language of paragraph (c) as potentially permitting differential degrees of comprehensive controls for areas of particular concern. Two of these commentators suggested that the comment subverted the purposes of the Act and should be deleted. The third suggested the conditions under which these differences might be appropriate should be specified.

NOAA response. NOAA believes that the concept contained in paragraph (c) is a valid one and is not a subversion of the Act. It seems logical to conclude that in a State with a comprehensive regulatory system throughout its coastal zone (e.g., a permit requirement for any development in the coastal zone) that relatively less importance need be attached to designation of areas of particular concern if the permit system already addresses any concerns there may be about particular areas. Even in such situations, however, those States still would have to meet the requirements of paragraph (a). In these situations it may be anticipated that designations may be for non-regulatory purposes as for example, increased maintenance, interagency coordination, or technical assistance.

(4) One reviewer suggested an addition to paragraph (c) that requires States to develop management procedures for areas of particular concern no later than the completion of the first program management grant (awarded pursuant to section 306 of the Act).

NOAA response. NOAA finds no statutory requirement that would mandate, where further management procedures are to be developed after program approval that these must be developed within a year. While NOAA may, in fact, on occasion impose such a requirement as a grant award condition, a time limit of one year may not be appropriate and sufficient in all cases, and therefore, has not been made a condition of these regulations.

(5) One reviewer suggested it would be helpful to reference § 923.23 which discusses other areas of particular concern.

NOAA response. Reference to § 923.23 has been added to paragraph (c) as well as clarification that paragraph (a) of § 923.21 is required of all State programs while § 923.23 is optional.

(6) One reviewer objected to the term "review" resources in paragraph (d), noting that an "inventory" is the language contained in subsection 305(b)(3) of the Act.

NOAA response. The word "inventory" has been substituted for "review" in paragrah (d)(1).

(7) A number of changes were suggested to the categories listed for consideration in paragraph (d)(1):

(i) Addition of areas of saltwater intrusion and potable ground water resources;

(ii) Clarification of the term "physical feature" in sentence (i);

(iii) Addition of "areas in or determined to be eligible for the National Register of Historic Places" to sentence (i);

(iv) Addition of "endangered species" to sentence (ii);

(v) Addition of "hydrologic" to sentence (v); and

(vi) Addition of "estuaries" to sentence (viii), and changing "aquifer recharge areas" to "aquifers and their recharge areas."

NOAA response. NOAA has incorporated all the changes recommended above.

(8) One reviewer objected to sentences (iv), (v), and (vi) of paragraph (d) as providing too much latitude to

designate areas which may not have direct and significant impacts on coastal waters.

NOAA response. NOAA has reviewed the examples provided in the cited sentences, and is satisfied they represent examples of areas which could have direct and significant impacts on coastal waters, and therefore are appropriate for consideration for designation as areas of particular concern.

(9) Several reviewers commented on paragraph (d)(5). Two suggested Federal consultation should be required in designating areas of particular concern, not just encouraged. One reviewer recommended that the State Historic Preservation Officer be specifically mentioned, and expressed concern over how NOAA intends to comply with the National Historic Preservation Act (NHPA). Another reviewer objected to the lack of local input and suggested rewording of this section.

NOAA response. In response to the first and last comments, NOAA believes the present regulations are appropriate. There is nothing in the Act to specifically mandate Federal or local government input into designation of areas of particular concern.

With respect to the second comment, NOAA does not feel it necessary or appropriate in this section to single out the Historic Preservation Officer. Additional, NOAA does not feel it appropriate to address how it complies with the NHPA in a section addressing State responsibilities. In any case, NOAA fulfills the mandates of the NHPA during its review of State programs, after they are submitted to the Assistant Administrator for approval, by sending copies of a State's program to the Advisory Council on Historic Preservation for their review and comment, and by reviewing a State's program for any site-specific aspects of the program that could affect properties on the National Register of Historic Places.

(c) *Section 923.22—Priority of Uses.* (1) Five reviewers objected that the development of priority of use guidelines is required only for areas of particular concern. These commentators suggested the Act mandates priority of use guidelines for the entire coastal zone. Conversely, one commentator suggested the section be rewritten to clarify that it is not a requirement of the Act that priority guidelines be established for all areas of particular concern.

NOAA response. The language of subsection 305(b)(5) of the Act—"broad guidelines on priorities of uses *in particular areas*" (emphasis added)—is ambiguous and has caused confusion as to its meaning. A review of the legislative history does not provide any further guidance. Accordingly, NOAA has determined that a useful, as well as reasonable, interpretation of the words "in particular areas" is to deem them to be synonymous with "areas of particular concern." Moreover, NOAA believes that the general concern of the reviewers—that there be a clear articulation of State policy preferences for certain resources, uses, or areas in the coastal zone—is covered adequately by the requirements of § 923.3 for clearly stated and specific coastal zone policies.

In response to the second comment, NOAA does believe it is a requirement of the Act that priority use guidelines be established for all areas of particular concern designated pursuant to § 923.21.

(2) One reviewer noted that designation of lowest priority uses should be part of the requirements of paragraph (a), and not just discussed as part of the paragraph (d) commentary.

NOAA response. NOAA regrets that, through oversight, this requirement was omitted from paragraph (a). This omission has been corrected in these regulations.

(3) One commentator objected that the regulations encourage guidelines that may be so restrictive as to be confiscatory.

NOAA response. NOAA disagrees in that the guidelines are advisory.

(4) One reviewer objected that paragraph (f) weakens this section by making the guidelines advisory and recommended the comment be deleted.

NOAA response. The word "guidelines" implies that they may be advisory and, in fact, need not have the force of law. Accordingly, NOAA has retained paragraph (f).

(d) *Section 923.23—Other Areas of Particular Concern.* (1) One reviewer objected to the approval of management programs without establishment of necessary management techniques and suggested that the regulations require area of particular concern designations (including identification of authorities to manage these areas) to be in place prior to program approval.

NOAA response. NOAA believes this reviewer has misinterpreted the requirement. Section 923.21 requires the designation of a number of areas of particular concern, including identification of how the appropriate management is to be accomplished prior to program approval. What § 923.23 does is provide States with an optional technique for further indicating areas that are known to require additional management although the exact nature of appropriate management requires some additional time to determine or to effectuate. This option seems reasonable in light of the dynamic nature of coastal management requirements, and the realities of the time and effort required in some cases to develop appropriate management techniques.

(2) One reviewer suggested more explanation as to what are "areas that are known to require additional or special management" referred to in paragraph (a)(1).

NOAA response. NOAA believes it is up to the States to make this determination. Accordingly, no change has been made to this paragraph.

(3) One commentator suggested that proposed paragraphs (a)(2), and § 923.24(c) be combined for greater clarity.

NOAA response. NOAA has accepted this recommendation. Section 923.24(c) is now included as part of § 923.23(a)(2).

(4) One reviewer suggested that NOAA require the establishment of a process whereby States can continue to designate areas of particular concern after program approval to address changing management needs.

NOAA response. While NOAA believes establishment of such a process is both beneficial and desirable to meet changing management needs, NOAA does not find any statutory basis to mandate the establishment of such a process. It is for this reason that § 923.23 is recommended but not required.

(e) *Section 923.24—Areas for Preservation and Restoration.* (1) Three reviewers suggested that the relationship between areas of particular concern and areas for preservation or restoration be clarified and that acceptable criteria for designation of areas for preservation or restoration be listed. Conversely, one reviewer suggested that the requirement for States to describe criteria by which areas for preservation or restoration can be designated be eliminated.

NOAA response. NOAA believes the relationship between areas of particular concern and areas for preservation or restoration is already clear. Areas of particular concern are *areas* designated at the time of management approval. The areas for preservation/restoration requirement is for establishment of a *process* (i.e., criteria and procedures by which designations can be made) prior to program approval. NOAA believes it is up to the States to determine appropriate criteria and procedures, and, therefore, has not provided criteria in these regulations. NOAA does feel that requiring States to describe these criteria and procedures is not an unreasonable requirement and, in fact, fulfills the requirements of subsection 306(c)(9) of the Act which states that "the management program makes *provisions for procedures* whereby specific areas may be designated * * *." (Emphasis added).

(2) One commentator suggested that the regulations require that areas for preservation or restoration designated for environmental, aesthetic, historic

or cultural purposes cannot be subject to uses or modifications which detract from the purposes for which they are designated.

NOAA response. Such additional language is not necessary. It is assumed that protection of the resources mentioned above would be included as part of the designation.

(f) *Section 923.25—Shorefront Access and Protection Planning.* (1) One reviewer suggested that "preservation" in the title of this section be changed to "protection" to comport with the language of the Act.

NOAA response. This was an oversight on NOAA's part. The suggested word change has been made.

(2) One reviewer requested clarification of whether the planning requirements of this section, and § 923.26, apply only to ocean frontage or to other shorelines such as along wetlands and coastal rivers.

NOAA response. While States have the option of including other shoreline areas in the planning requirements, the minimum requirement is to address areas along ocean frontage and, in the case of the Great Lakes States, along the Great Lakes.

(3) One reviewer suggested that, while the 1976 Amendments to the Act called for a planning process, the intent was that States implement the plans. Therefore, the regulations should be restructured to require States to initiate action programs.

NOAA response. Paragraphs (a) (3) and (5) already accomplish this very intent.

(4) With respect to the requirements in paragraph (a), the following suggestions were received:

(i) Require States to indicate present laws concerning access;

(ii) Require States to demonstrate the enforceability of policies in light of the conservation purposes of the Act; and

(iii) Delete the term "and/or" and use one or the other word.

NOAA response. With respect to the first comment, sentence (a)(5) has been revised to include an identification of legal authorities.

With respect to the second comment, sentence (a)(3) has been revised to include the word "enforceable."

With respect to the third comment, the words "and/or" have been deleted and the words "and" or "or" have been substituted as appropriate.

(5) One commentator requested a clarification of what kinds of "other public coastal areas" cited in paragraph (b)(1) should be included.

NOAA response. Comment (c)(5), which was incorporated from 15 CFR 920.17, provides the requested clarification.

(g) *Section 923.26—Shoreline Erosion/Mitigation Planning.* (1) One reviewer suggested that this section also should address the fact that erosion is a natural ecological phenomenon and that States should consider the impacts of mitigation or restoration on adjacent shorelines, littoral drift and other ecological processes such as accretion.

NOAA response. NOAA has included this concept as paragraph (2) of Comment (c).

(2) Another commentator suggested that the word "can" in the first line of paragraph (a) should be replaced with the word "must."

NOAA response. The recommended change has been made.

SUBPART D

(a) *Section 923.30—General.* One commentator suggested the regulations cite the definition of "coastal waters" from section 304(2) of the Act.

NOAA response. NOAA has added the citation as paragraph (d).

(b) *Section 923.31—Inland Boundaries.* (1) One reviewer suggested adding the words "which have direct and significant impacts on coastal waters" to paragraph (a)(1).

NOAA response. This suggestion has been adopted.

(2) Another reviewer requested further clarification of what is meant by "transitional and intertidal areas" in paragraph (a)(3). This reviewer suggested "coastal areas that affect coastal waters, as well as those that are distinctly affected by coastal waters" as clarifying language.

NOAA response. NOAA has added clarifying examples to paragraph (a)(3). These are more specific than the language suggested above.

(3) One reviewer suggested that "periodic" in paragraph (a)(4), as it relates to tidal inundation, be defined.

NOAA response. The word "regular" has been substituted for "periodic."

(4) One reviewer objected to the possibility that interior portions of main islands might be excluded from the coastal zone and recommended that the last sentence of paragraph (a)(5) be deleted. Conversely, one reviewer suggested that this paragraph puts a greater burden of proof on affected island jurisdictions than on mainland coastal States. Two reviewers suggested that this paragraph seemed to imply that only island jurisdictions, and not all coastal States, are required to include offshore islands in their coastal zones.

NOAA response. NOAA agrees with the second commentator that islands should have no greater burden of proof as to the area included in the coastal zone than mainland States. However, NOAA believes the language of paragraph (a)(5) imposes no greater burden on islands than on mainland States. NOAA also agrees with the third set of reviewers that proposed paragraph (a)(5) could be misread to imply that coastal States do not have to include offshore islands in their coastal zone. NOAA has revised paragraph (a)(5) to remove any possibility of such a misinterpretation.

(5) One reviewer requested additional guidance or examples in paragraph (b) specific to the Great Lakes States.

NOAA response. NOAA has reviewed this commentary and believes additional guidance is unnecessary. While paragraph (b)(2) is not relevant to Great Lakes States, paragraphs (1) and (3) are.

(6) One commentator suggested that it is a clear intent of the Act that watersheds (discussed in paragraph (b)(1)) which affect coastal waters must be included in the coastal zone. Conversely, a couple of reviewers objected to the latitude provided States to include entire watersheds and suggested that there is no statutory basis for this provision. Another reviewer suggested the term "entire watershed" is controversial. This reviewer suggested that an upstream boundary based on the normal or average position of saltwater intrusion would be more workable than the approach of the proposed regulations. Finally, one reviewer recommended that the regulations indicate that nothing in this paragraph is intended to lessen the consistency requirements for Federal projects upstream that could alter the quality of coastal waters.

NOAA response. With respect to the first two sets of comments, NOAA believes the approach it has taken to inclusion of entire watersheds in a State's coastal zone is a reasonable and correct one for the reasons contained in paragraph (b)(1) of § 923.31. However, NOAA has clarified that such watershed areas be included only where there are uses that have direct and significant impacts on coastal waters.

With respect to the third comment, NOAA has removed the word "entire" from the heading of this paragraph and has included the concept of average saltwater intrusion.

With respect to the last comment, it is inappropriate to include, in the program development and approval regulations, commentary that is directed to the Federal consistency requirements of section 307 of the Act for which there are separate regulations (15 CFR Part 930).

(7) Several reviewers objected to the definition of tidal influence, as five parts per thousand in paragraph (b)(2), as being too restrictive. Two of these reviewers suggested that the boundary extend to the area inundated by tides from a one hundred-year storm. Another reviewer suggested the regulations require the inclusion of rivers upstream to the limit of tidal influence. One commentator suggested the salinity determination would re-

quire exceedingly expensive physical analyses and that reference to it should be deleted. Finally one reviewer suggested wording to limit the scope of this paragraph to areas "adjacent to the State's shoreline" as defined in the Submerged Lands Act.

NOAA response. NOAA agrees that "five parts per thousand" is inappropriate and therefore has dropped reference to this term. NOAA has not made any of the other changes recommended above as it believes the present interpretation is correct. To adopt the first two suggestions would exceed statutory authority and to adopt the last suggestion would be too limiting.

(8) One reviewer objected to permitting Indian non-trust lands to be commingled with trust lands or to be included in any manner in a coastal zone management program.

NOAA response. This paragraph as well as § 923.33(e), makes clear that trust lands are excluded from a State's coastal zone. However, non-trust lands, which are not owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government need not be excluded from a State's management program. Accordingly, NOAA sees no basis for this reviewer's objection. Moreover, the possible tribal participation discussed in § 923.33(e) was reviewed with affected tribes.

(9) One reviewer suggested that paragraph (c), by not requiring States to define the boundary in urban areas on the basis of direct and significant impacts on coastal waters, would undercut the purposes of the Act. Another reviewer suggested that the area of sewage collection or urban runoff discharged into coastal waters could be a basis for determining urban coastal boundaries.

NOAA response. NOAA does not intend the commentary of paragraph (c) to undermine the purposes of the Act but rather to recognize the very real difficulties States face in trying to determine direct and significant impacts in urban areas and to suggest some options for determining a reasonable urban boundary. NOAA believes the examples provided by the second commentator are particularly useful in this regard and has included them in this paragraph.

(10) One commentator objected to the words "coastal resources" in paragraph (d) as providing too much latitude and suggested instead use of the words "coastal waters" consistent with the language of the Act.

NOAA response. This suggestion has been accepted.

(11) Three reviewers expressed concern over the time States have to determine if a location is in the coastal zone as provided in paragraph (e). Two of these reviewers suggested 30 days was too much time and one suggested a 10-day limit. Another commentator requested a clarification of "a reasonable period of time."

NOAA response. NOAA has added the suggestion that States attempt to respond to inquiries in as short a time as possible and has noted that 30 days is a maximum, not a minimum. Additionally, NOAA has clarified what is meant by "a reasonable period of time."

(12) One reviewer suggested that maps, charts, and other graphics appropriate to understanding the provisions and geographic scope of the management program be a requirement. Another review suggested that, based on experience with other programs, either specific maps or no maps at all be required.

NOAA response. As noted in an earlier response to a similar comment that maps of areas of particular concern be required, NOAA does not find a statutory basis for making maps a required part of program submission. In response to commentators' concerns, however, NOAA has deleted the word "generalized" in order to encourage more specific maps.

(13) One commentator suggested the following paragraph be added to this section:

Comment. The landward extent of the coastal zone is to be determined by the State, subject to the statutory limitations. However, it is clear that the intent of Congress was that States delineate boundaries with a relatively conservative approach, including only those "shorelands, the uses of which have a direct and significant impact on the coastal waters." In the final analysis States possess a great deal of discretion in defining the inland boundaries of their coastal zones, subject to the minimum requirements of the Act.

NOAA response. NOAA finds the above to be confusing and contradictory and does not feel that any greater understanding of the requirements would be provided by adding this comment.

(c) *Section 923.32—Seaward Boundaries.* One reviewer suggested the regulations address the issue of disputed State boundaries. Two other reviewers suggested that States delineate their lateral seaward boundaries.

NOAA response. In response to both these comments, paragraph (d) has been added.

(d) *Section 923.33—Excluded Federal Lands.* (1) Two reviewers objected to the broad exclusion from the coastal zone of leased Federal lands or lands the use of which is subject solely to Federal jurisdiction. One other commentator suggested that lease of Federal holdings to private individuals or entities should not be excluded. Still another commentator was concerned how the regulations would affect frequent surplusing of land.

NOAA response. The issue of what is meant by the term "excluded Federal lands" referenced in section 304(1) of the Act has been a longstanding and controversial one. The issue was initially referred to the Department of Justice. An Assistant Attorney General's opinion dated August 10, 1976 partially addressed the issue with respect to owned lands. The issue of leased lands was not resolved in that opinion. However, during an Office of Management and Budget-sponsored Quality of Life Review of the Federal consistency regulations (15 CFR Part 930), the issue was discussed again and the position contained in this section was agreed to. With respect to the commentator's concern about Federal lands leased to private parties, NOAA's position is that the lands themselves, if owned by a Federal agency regardless of whether leased to a private party, are excluded. However, the activities of the private party on those leased lands are subject to the provisions of the State's management program if such activities have effects on the State's coastal zone. With respect to the comment on surplused lands, until the General Services Administration declares Federal lands surplus and available for disposition to other than a Federal agency, these lands are excluded. However, as paragraph (c) notes, States may indicate in their management program appropriate use of Federal lands if and when they are declared surplus.

(2) NOAA has changed all references to "areas" and "holdings" in this paragraph to "lands" to comport with the language of section 304(1) of the Act.

(3) Two reviewers suggested that guidance be provided regarding the effect of management programs on Federal land acquisition proposals. These reviewers were concerned that unless the ability of the Federal Government to acquire or assist in the acquisition of lands is made clear, a State could attempt to block a land acquisition proposal. One of these reviewers suggested that Federal agencies should be provided with the option, at their sole discretion, of allowing lands they propose to acquire to remain within a State's coastal zone.

NOAA response. While NOAA appreciates the concerns of these reviewers, land not owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government is not excluded from the coastal zone. Accordingly, land that may be acquired in the future by the Federal Government cannot be excluded in the present from a State's coastal zone. NOAA also does not find a statutory basis for adding the language suggested by the one reviewer. It should be noted, however, that the Federal Government's powers of eminent domain are protected by the provisions of subsection 307(e) of the Act.

(4) One reviewer objected to the apparent requirement that States map excluded Federal lands as this would place an unreasonable hardship on some States.

NOAA response. This reviewer has misread the requirement as paragraph (a) says that States must "describe *or* map" (emphasis added), leaving the option to States as to whether or not they map excluded Federal lands.

(5) One commentator objected to the language in paragraph (e), regarding tribal participation in coastal management, asserting that it is highly offensive in its tone.

NOAA response. As noted in response to an earlier comment, this statement was reviewed by affected Indian tribes and no objections were received by NOAA.

(e) *Section 923.34—Interstate Boundaries.* One reviewer suggested that the requirements of this section are weak, requiring no more than consultation. This commentator further suggested that a record of telephone conversations and meetings, as suggested in the commentary in paragraph (b), is sufficient to ensure coordination.

NOAA response. NOAA believes the present requirement is sufficient to meet the purposes of the Act. NOAA has deleted paragraph (b).

SUBPART E

(a) *Section 923.40—General.* One commentator suggested that it should be a requirement that the authorities relied upon must be capable of prohibiting uses inconsistent with the management program. This reviewer further suggested that the regulations should state that the adequacy of authorities will be scrutinized in light of subsection 302(g) of the Act which speaks to the present inadequacy of present institutional arrangements for planning and regulating land and water uses.

NOAA response. NOAA believes that the requirements of this subpart already require that authorities be capable of prohibiting uses inconsistent with the management program. However, NOAA does not interpret this to mean that "management" necessarily implies prohibition of uses in all situations. In response to the second comment, NOAA has added a new paragraph (c) discussing the Assistant Administrator's review responsibilities with respect to subsection 302(g) of the Act.

(b) *Section 923.41—Identification of Authorities.* (1) One reviewer suggested that States should be required to show how "all" existing State laws, legislative history and court rulings support authorities relied upon.

NOAA response. The requirement to identify "relevant" authorities is sufficient.

(2) One commentator suggested that the last sentence in paragraph (b)(1) be expanded to allow a legal opinion to be obtained from the Governor's designated legal advisor for coastal management as an alternative to the State's Attorney General. Conversely, one reviewer suggested that "in the opinion of the Assistant Administrator" be deleted and the word "may" changed to "must."

NOAA response. With respect to the first comment, the purpose of this paragraph is to make it clear that there may be occasions when the Assistant Administrator will insist on a legal opinion being from the State's Attorney General. The present wording does not preclude seeking such an opinion from the Governor's designated legal advisor but does make clear that sometimes this will not be sufficient to satisfy the Assistant Administrator.

With respect to the second comment, there is no language in the Act or legislative history that would make such an opinion mandatory.

(3) One reviewer suggested further guidance could be provided regarding resolution of conflict among competing uses.

NOAA response. The guidance requested already is provided in *Comment (f).*

(4) One commentator suggested a clarification that the mechanisms to resolve conflicts discussed in paragraph (f) must result in a legally binding decision.

NOAA response. This suggestion has been accepted in modified form so that paragraph (f) now reads, "* * * provided that any procedure results in a decision which is binding upon the entities involved."

(5) In connection with paragraph (g), one reviewer suggested that States include evidence of a commitment to use identified funds to implement the acquisition plans called for in this paragraph.

NOAA response. NOAA has accepted this suggestion.

(c) *Section 923.42—Control Techniques.* (1) One commentator suggested the regulations were unclear as to which policies a State must be able to enforce.

NOAA response. Clarification has been added to § 923.3(h) where it is more appropriate.

(2) One reviewer noted that different degrees of specificity may occur depending upon the type of control system a State is using, and suggested a statement to clarify that regardless of the control technique selected, the management program, "as an integrated whole, must set forth policies, criteria, and standards with the same degree of specificity (and resulting administrative predictability) as would be required for any other control technique."

NOAA response. This suggestion has been rejected as unnecessary and inappropriate. The criteria for approvability with respect to policy specificity is contained in § 923.3(a)(2). As long as the test contained therein is met, there is sufficient uniformity of specificity.

(3) One commentator suggested that the word "policies" in paragraph (c)(1) be deleted to follow more closely the language of subsection 306(e)(1)(A) of the Act.

NOAA response. NOAA has accepted this suggestion.

(4) Three commentators objected to the discussion is paragraph (c) of program approval in the case where local programs are not completed.

NOAA response. If the conditions in paragraph (c)(4) are met, then approval of a State's program in advance of local program completion is warranted. Paragraph (c)(4)(iv) specifies, among other things, that there must be "sufficient direct State authorities to ensure that land and water use decisions subject to the management program will be consistent with the policies, goals and objectives of the management program between the time of section 306 approval and the time when all local programs are adopted." Also, see discussion of local programs under major changs above.

(5) One commentator suggested the example in paragraph (c)(2)(i) include reference to the potential of new development to damage historic and cultural resources.

NOAA response. The paragraph to which the reviewer refers is a quote from an approved State program. This has been clarified in these regulations.

(6) One reviewer suggested each program should specify a means of overriding conflicting local ordinances or actions.

NOAA response. The Act does not require an override, *per se,* as suggested by the commentator. It does require States to have a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit. These requirements are addressed in §§ 923.13 and 923.43.

(7) One commentator suggested that paragraph (c)(5) require a State to provide notice to Federal agencies when it has determined that local programs are in compliance with State criteria.

NOAA response. In response to this comment, a new paragraph (c)(4)(ii) has been added to this section that requires procedures for State approval of local programs to include provisions for:

(i) The public and governmental entities to provide input into the development of local programs;

(ii) The public and governmental entities to make their views known prior to State approval of local programs; and

(iii) Review by the State of the adequacy of local consideration of facilities identified in the State's program as having national interests attached to them.

(8) Four reviewers objected to the term "pattern of noncompliance" in paragraph (c)(6). Two of these reviewers suggested that in certain instances even a single noncompliance can have devastating effects.

NOAA response. In view of these comments, NOAA has revised this paragraph to provide that the monitoring system must be capable of detecting single instances of noncompliance where uses of regional benefit or facilities in which there is a national interest are involved.

(9) One reviewer felt the discussion of networking in paragraph (d) was inadequate and that the regulations should require States to demonstrate that:

(i) Existing, special purpose laws adequately reflect and will be operated in conformity with the State's management program; and

(ii) Any executive order or interagency agreement is legislatively authorized and legally binding and enforceable in State court.

NOAA response. These concepts already are addressed in the regulations. Paragraph (d)(3) provides that "* * * the effect of networking is to tie the implementation of these individual authorities into a comprehensive framework that addresses more than the individual responsibilities of each agency and that makes these authorities part of an overall, unified strategy for managing coastal land and water resources. In applying existing authorities, the State must determine that they can be used to implement the full range of policies identified as necessary for coastal management purposes." Paragraph (d)(4) states in relevant part: "Each State agency which exercises statutory authority that is to be incorporated into the management program must be legally bound to exercise its authority in conformance with the State's enforceable policies. This can be achieved through an executive order or an interagency agreement * * * provided that such order or agreement binds the affected parties to conformance with relevant management program policies."

(10) One commentator objected to the provision in paragraph (d)(5) that allows citizens as a vehicle for bringing suit to ensure enforcement of interagency agreements. This commentator also objected to enforcement by a State agency or the Attorney General unless these have been given responsibility for enforcement.

NOAA response. NOAA does not understand the basis for the reviewer's objections and thinks the present regulations are reasonable. It is assumed that a State agency or the Attorney General will not be responsible for enforcement unless charged with and legally capable of assuming that responsibility.

(11) A couple of reviewers suggested that paragraph (e) should require administrative review for land and water use regulations (including exceptions and variances thereto) in addition to the items already included to comport more closely with the language of subsection 306(e)(1)(c) of the Act.

NOAA response. Paragraph (e)(1) has been revised accordingly.

(12) Two reviewers suggested that paragraphs (e)(2) and (3) appear to be in conflict and that, at a minimum, paragraph (e)(3) should state which type of actions may be exempted from case-by-case review.

NOAA response. To avoid confusion, NOAA has deleted a portion of paragraph (e)(3).

(d) *Section 923.43—Authorities Related to Uses of Regional Benefit.* (1) One reviewer suggested that a mechanism "for reviewing the impact of local policies on greater than local interests" does not meet the requirements of subsection 306(e)(2) of the Act and that an "affirmative statutory or regulatory mandate" is required.

NOAA response. The present regulations require more than simply a mechanism for reviewing the impact of local policies. Section 923.43(c) provides in relevant part that States may meet the requirements of this section through:

(i) Statewide siting laws that supersede local regulations when necessary; or

(ii) Assurance that an adequate amount of sites are or can be set aside through:

(A) State acquisition programs;

(B) Provision of sites in local maps or ordinances; or

(C) State guidelines defining uses of regional benefit and requiring their consideration as local implementation programs are developed; or

(iii) Definition of what constitutes unreasonable restrictions or exclusions and an administrative or judicial means for dealing with such restrictions or exclusions when they occur.

(2) One reviewer suggested eliminating the words "in addition to the requirement of § 923.13 to determine what constitute uses of regional benefit."

NOAA response. These words have been left in, in the belief they clarify that this section comprises the second half of the requirements necessary to meet subsection 306(e)(2) of the Act.

(e) *Section 923.44—Air and Water Pollution Control Requirements.* (1) One reviewer suggested language be included which recognizes the term "requirement" has been defined by EPA General Counsel to include any enforceable standard or duty established pursuant to the Act.

NOAA response. This suggestion has been incorporated into paragraph (a).

(2) This same reviewer made a number of suggested revisions to the table in this section to reflect changes resulting from recent amendments to the Clean Air Act.

NOAA response. These suggestions have been adopted.

(3) One commentator suggested that old 15 CFR 923.44(b)(2) which encouraged the development of working relationships between air and water quality agencies and coastal zone programs still is appropriate and should be included. Relatedly, another commentator suggested further discussion would be helpful of ways to incorporate these standards.

NOAA response. In response to these comments, paragraph (c)(1) has been expanded.

(4) One reviewer was concerned that requiring States to include in the management program the more stringent standards discussed in paragraph (c)(4) would require detail beyond the scope of practicality.

NOAA response. NOAA appreciates the concern of this reviewer but believes the language of paragraph (c)(4)(ii) is sufficiently flexible, especially in its referral to "a separate reference," to accommodate the reviewer's concern.

(f) *Section 923.45—Organizational Structure.* No comments.

(g) *Section 923.46—Designated State Agency.* One reviewer suggested that the designated State agency must have the capability to enforce implementation in addition to the capability to monitor and evaluate implementation.

NOAA response. Enforcement capability need not rest with the designated State agency. In many cases, other State agencies, the courts, the Governor, or an administrative mechanism, may be used to enforce implementation.

(h) *Section 923.47—Documentation.* (1) One reviewer suggested that the "networking" of many independent governmental entities creates special documentation problems. As examples this reviewer cited the fact that the powers of Governors in many States are limited and that in some States officials may be elected directly and have authorities independent of the Governor.

NOAA response. NOAA regards these examples as legal issues and not documentation problems in the sense in which this section is meant. These issues already are addressed in § 923.42(d)(4).

(2) One commentator suggested that this section should be amended to ensure that all portions of a management program be adopted only after

duly noticed public hearings at which these portions are clearly identified as part of the management program.

NOAA response. This comment is more appropriately addressed as part of the discussion of *Section 923.58—Public Hearings.*

SUBPART F

(a) *Section 923.50—General.* one commentator suggested that the word "reconciliation" be substituted for "balancing" in the sentence that reads, "The policies of section 303 of the Act require a balancing of varying, sometimes conflicting, interests be achieved * * *"

NOAA response. The semantic difference seems to minor to warrant a change.

(b) *Section 923.51—Federal-State Consultation.* (1) One reviewer recommended that this section be redrafted to reflect the obligation of States to seek and consider Federal interests, especially those associated with facilities in which there may be a national interest pursuant to subsection 306(c)(8) of the Act.

NOAA response. The section as presently written, especially paragraphs (b) and (c), more than adequately reflect the concerns of the reviewer. Moreover, the obligation of States to consider adequately facilities in which there is a national interest is addressed at length in § 923.52.

(2) One reviewer suggested public notice be given of forthcoming contacts between the State and Federal agencies.

NOAA response. To impose this requirement, which NOAA regards as neither legally necessary nor appropriate, would create an administrative burden that could render the whole concept of Federal consultation unworkable. Much of the consultation envisioned by this section is anticipated to be in the form of telephone calls, letters, and informal meetings. Requiring public notice of such activities is not reasonable.

(3) One reviewer suggested that evidence of Federal-State consultation in the form of a Federal agency statement be required.

NOAA response. The requirements of paragraphs (b) (3) and (5) accomplish the general purpose suggested by the reviewer without necessitating a statement from Federal agencies.

(4) Two reviewers commented that there is no language in the Act requiring States to accommodate, even where "appropriate," Federal views on substantive elements of a State's program, and that the regulations should make clear that States determine whether accommodation is "appropriate,"

NOAA response. NOAA has accepted the above recommendation and has clarified paragraph (b)(4) accordingly.

(5) One reviewer suggested that the words "should" and "encouraged to" in paragraph (f) should be changed to "shall" and "must." Relatedly this reviewer felt that the discussion of Federal agency contributions to national interest statements should be cast in terms of Federal agencies being the determiners of national interest.

NOAA response. The present phraseology is correct as it is meant to provide suggestions as to viable approaches to consultation. It is not meant to be all inclusive nor the only means of approaching the consultation requirements. The question of how national interests are determined is discussed in response to similar comments directed at § 923.52.

(c) *Section 923.52—Consideration of National Interests.* (1) Several commentators suggested that this section fails to implement subsection 306(c)(8) of the Act properly by not providing sufficient guidance as to what constitutes "adequate consideration" by a State.

NOAA response. Paragraph (i) discusses the items the Assistant Administrator will assess in determining if a State has given "adequate consideration" to facilities in which there is a national interest.

(2) Five commentators objected to language in (what are now) paragraphs (b), (f), and (g) that left it to States to determine the nature of national interests to be considered during program development and after program implementation, maintaining that it is a function of Federal agencies to determine what constitutes the national interest. In this connection, one commentator recommended that words such as "determining" or "for deriving" be replaced with "considering" and "which specify" in order to alleviate these commentators' concerns.

NOAA response. NOAA has made the recommended word changes but paragraph (g) indicates that Federal laws, and policy statements from the President, in addition to Federal agency statements, are sources which specify national interests to be considered by a State.

(3) One commentator suggested the requirements in (now) paragraph (b)(2) be expanded to require regional and local interests be weighed and reflected in the management program.

NOAA response. Subsection 306(c)(8) is oriented towards consideration of national interests. However, as noted in the major changes above, paragraph (a) has been revised to note that the national interest in particular facilities shall be done in the context of other Federal, State and local concerns involving adverse economic, social or environmental impacts.

(4) One reviewer suggested that it would be helpful to provide an explanation of what interstate energy plans (referenced in now paragraph (c)(1)) should be considered.

NOAA response. Paragraph (c)(1) has been clarified to indicate that the interstate energy plans referred to are those developed pursuant to section 309 of the Act.

(5) One reviewer objected to (now) paragraph (c) as this reviewer does not believe State programs can be approved until they meet the energy facility planning requirements of subsection 305(b)(8) of the Act.

NOAA response. As noted in response to a similar comment on § 923.14, NOAA has reviewed the legislative history and the language of the Act and is convinced that Congress intended that State programs, approved prior to October 1, 1978, have until that date to meet the requirements of subsection 305(b)(8).

(6) One reviewer objected to reference in (now) paragraph (f) to "regional demands" as this is not a necessary criterion for determining if a facility meets "requirements which are other than local in nature."

NOAA response. The commentary in paragraph (f) is meant to assist States in meeting the requirements of this section. To the extent reference to "regional demands" is not helpful, it has been deleted.

(7) One commentator suggested that proposed paragraph (e) (now paragraph (f)) should require that all comments received from relevant Federal agencies be made available for public comment before the Assistant Administrator makes a final determination on the approvability of a State's program.

NOAA response. Section 923.51(b)(6) already requires States to indicate the nature of major comments by Federal agencies during program development. The purpose of this requirement is to enable the Assistant Administrator to assess a State's consideration of these comments. These comments are included as part of the Draft Environmental Impact Statement (DEIS) distributed for public review and comment.

(8) Numerous additions to Tables 1 and 2 were suggested.

NOAA response. With very few exceptions, the recommended changes to Tables 1 and 2 were made. Readers are invited to compare the tables as they appeared in the proposed regulations and as they now appear herein for specific additions. Those additions that were not adopted were rejected because they were not compatible with the intent of the tables.

(9) One reviewer suggested that sources in (now) paragraph (g) for deriving national interests should be limited to Federal laws, policy statements from the President, and statements from Federal agencies. This re-

viewer maintained that plans from other Federal, State or interstate agencies (such as interstate energy plans) and testimony from public hearings are too "ephemeral" to be used as sources for deriving national interests.

NOAA response. Plans from other governmental entities, especially Federal agencies, may be useful sources for specifying the national interest in facilities. Accordingly, sentence (g)(4) has been left in these regulations. NOAA agrees that testimony from public hearings or other public input may be too "ephemeral" to be a useful source and accordingly has deleted this reference.

(10) One commentator indicated that (now) paragraph (i)(3) was unclear whether State responses to Federal agencies' comments should be directly to the commenting agency or whether the program document would suffice as a response.

NOAA response. To the extent a State's program document meets the requirements of § 923.51(b)(5), with specific reference to major siting concerns raised by Federal agencies, the program document will suffice. There may be situations, however, where direct response to a Federal agency, separate from any response in the program document, may be both appropriate and desirable. Accordingly, States may find it useful to maintain a separate file of direct responses to Federal agencies.

(d) *Section 923.53—Federal Consistency Procedures.* (1) One commentator suggested that the words "in the opinion of the State" should be inserted ahead of "will be subject to these provisions." This insertion is the same as in 15 CFR 930.35 of the Federal Consistency regulations.

NOAA response. This suggestion has been accepted.

(2) One reviewer suggested States be able to include the consistency procedures as an appendix rather than as part of the main body of the document.

NOAA response. This suggestion has been accepted.

(3) In addition, this section has been expanded to provide States with further guidance as to the Federal consistency procedures and listings that need to be included as part of the management program.

(e) *Section 923.54—Mediation.* (1) One commentator suggested the regulations ignore the statutory directive that the Secretary shall seek to mediate, by allowing any party to refuse to participate. Relatedly, another reviewer objected that mediation efforts should last only so long as both parties agree to participate.

NOAA response. Unlike arbitration, the results of mediation are not binding but rather advisory. The essence of mediation is that disagreeing parties voluntarily agree to discuss the issue with a neutral party acting as both referee and conciliator. Under the concept of mediation and under the statute, the Secretary has no authority to force parties to agree to initiate mediation, or even to continue mediation, once it has begun.

(2) One reviewer suggested that the regulations be revised to require all mediation conferences be public.

NOAA response. This is not required under the Administrative Procedure Act or any other Federal law. However, in response to this reviewer's concern, NOAA has added a provision to paragraph (f) for notice in the FEDERAL REGISTER of such conferences.

(3) In connection with paragraph (i), one reviewer suggested the regulations include criteria for the Assistant Administrator's determination of whether inclusion of a serious disagreement in a State's management program would preclude approval. Another reviewer suggested a time limit be provided for the Assistant Administrator's action. Yet another reviewer suggested that the regulations should state that the Assistant Administrator's decision would be an appealable action.

NOAA response. With respect to the first comment, NOAA cannot foretell the nature of disagreements and what their effect would be on program approvability. Therefore, NOAA cannot provide the criteria requested.

Similarly, NOAA, cannot foretell the appropriate amount of time that will be required to determine if inclusion of a disagreement will have a negative effect on program approvability.

Finally, with respect to the last comment, to the extent the Assistant Administrator's decision is an appealable item, it is so on the basis of laws other than this Act and therefore the regulations need not state this to make it a fact.

(f) *Section 923.55—Full Participation.* (1) One commentator felt it was unclear if this section applied to Federal agencies, and accordingly, whether a mechanism was required to guarantee continued Federal consultation after program approval.

NOAA response. While the requirements of this section do not apply to Federal agencies, the requirement of § 923.52(b)(3) for a process for consideration of the national interest in facilities that are more than local in nature during program implementation guarantees a mechanism for continued Federal consultation. Even if such a requirement were not part of the regulations, common sense would dictate the necessity of a continuing State-Federal consultation element.

(2) One reviewer suggested that paragraph (a)(1) be expanded to require: a "sunshine" provision for open sessions; an obligation on States to solicit and consider public comments; and to define interested public and private bodies.

NOAA response. The thrust of these suggestions is addressed in the requirements of this section, especially paragraph (a) (2) and (3), and paragraph (2)(6) which has been added to require that public meetings be held at accessible times and locations, with reasonable notice and availability of materials.

(3) One reviewer suggested proposed paragraph (e) should be expanded to require States to summarize which public information techniques were used, when, and how effective they were.

NOAA response. The present requirements of paragraph (a) already cover the basic purpose of this suggestion—to ensure public knowledge of and participation in program development. In any case, NOAA does not intend the items in proposed paragraph (e) (now paragraph (d)), to be requirements but rather suggestions.

(g) *Section 923.56—Plan Coordination.* (1) Three commentators suggested that no program should be approved when unresolved conflicts exist with other public agency plans.

NOAA response. This recommendation is not a requirement of the Act. Subsection 306(c)(2)(A) calls for coordination which does not necessarily imply resolution of conflicts. Moreover, this coordination is only required for local, areawide, and interstate plans in effect on January 1 of the year in which the State's program is submitted, not for all public agency plans. In any case, paragraph (a)(3) already addresses the issue of resolving conflicts among plans.

(2) One reviewer suggested the urban transportation planning program be added to the list of areawide planning programs in paragraph (c). Another suggested adding State implementation plans (SIP's) pursuant to the Clean Air Act. A third reviewer recommended the word "applicable" precede "interstate" programs.

NOAA response. NOAA has adopted the first and third suggestions. NOAA has not included reference to SIP's in this list because they are not local, areawide, or interstate plans in the meaning of subsection 306(c)(2)(A) of the Act. In any case, the requirement for incorporating the Clean Air Act standards are addressed by separate sections of the Act and these regulations.

(3) One commentator questioned whether the A-95 process discussed in paragraph (d) can serve as a conflict resolution mechanism.

NOAA response. The A-95 process can serve as a conflict resolution mechanism because the procedures provide that conferences may be held to resolve conflicts if they are noted during the course of A-95 review.

(4) One reviewer suggested that a committee of local officials appointed from each municipality in the coastal zone could be a viable alternative to the use of the A-95 clearing houses as a conflict resolution mechanism.

NOAA response. NOAA has adopted this concept as paragraph (e) and expanded it to include regional, State, or interstate officials as well.

(h) *Section 923.57—Continuing Consultation.* (1) One reviewer suggested that the distinction in paragraph (e)(2) between a legislatively-mandated State agency "management program decision" and a discretionary one on the part of a State would be difficult to maintain. Accordingly, this reviewer suggested the regulations include a provision for local consultation on major, legislatively-mandated State agency decisions.

NOAA response. The discussion and examples in paragraph (e)(2) of what would constitute legislatively-mandated versus discretionary decisions are sufficiently clear to make distinctions as to which State actions need to be subject to the local consultation required by this section and which do not. Accordingly, the reviewer's recommendation has not been adopted.

(2) One reviewer suggested the word "landmarks" in sentence (e)(2)(v) be changed to "resources."

NOAA response. This suggestion has been accepted.

(3) One commentator recommended clarification of paragraph (e)(3) to indicate whether a conflict exists if local regulations are stricter than those of the State. Another reviewer suggested deleting the words "incompatible with."

NOAA response. NOAA has followed both recommendations. With respect to the first comment, paragraph (e)(3) now indicates that a conflict may occur when local requirements are stricter than the States.

(4) One reviewer suggested that the phrase "local zoning ordinance, decision or other action" in paragraph (e)(4) be defined very broadly to include approvals, denials, amendments, variances, and special exceptions. Conversely, another commentator suggested that the proposed definition, in including variances and special exceptions, already was too broad.

NOAA response. On reconsideration, NOAA believes the term "local zoning ordinance, decision or other action" should be defined narrowly, rather than broadly, in order to keep the consultation requirements from becoming too burdensome and thereby unworkable. Accordingly, the term is limited to zoning ordinances, master plans and official maps.

(5) One reviewer requested that the specific circumstances under which a local government forfeits its right to comment be defined.

NOAA response. This information already can be found in paragraph (e)(6).

(i) *Section 923.58—Public Hearings.* (1) One commentator suggested that all portions of a State's management program should be subject to a public hearing. This same reviewer objected to the provision in paragraph (d)(3) that the hearing(s) could be on the full scope of the management program but not necessarily on the document per se.

NOAA response. The requirement to hold public hearing(s) on the scope of the management program is reasonable. The program document is often extremely long and sometimes filled with detailed information necessary to meet some of the requirements of the Act but not particularly essential to the general public to understanding the impact of the program. Some States prepare executive summaries or some other shortened version of the program which describes its scope in an easily understandable form to the general public. However, to address the reviewer's concern, an additional provision has been added to paragraph (d)(3) to the effect that States must provide copies of the document on request if the hearings are not on the document *per se.*

(2) One reviewer suggested that all pertinent materials, not just agency materials, be made available to the public at the time of a public hearing.

NOAA response. This is not necessary as the term "agency materials" includes all pertinent materials that the agency used in development of the management program.

(3) One commentator suggested that paragraph (d)(6) be amended to allow States to submit summaries of public hearings within 30 days following formal program submittal to the Office of Coastal Zone Management (OCZM) for threshold review.

NOAA response. This recommendation has been adopted.

SUBPART G

(a) *Section 923.62—Environmental Impact Assessments.* (1) Two reviewers suggested the guidance on preparing environmental impact assessments be deleted and, in its place, reference be made to Council on Environmental Quality (CEQ) guidelines.

NOAA response. NOAA has retained this guidance because there are numerous and repeated requests from States for this information. If and when CEQ revises its guidelines or adopts regulations on the subject, OCZM will review and revise, if necessary, the information contained in this section.

(2) One commentator suggested, in connection with paragraph (c), that it would be helpful to list the criteria to be used to determine when an Environmental Impact Statement (EIS) will be necessary for segment programs.

NOAA response. The criteria OCZM uses to determine if an EIS is necessary for a segment program, a full program, or an amendment, are those contained in the National Environmental Policy Act (NEPA) and CEQ guidelines. Paragraph (c) has been revised to reflect this.

SUBPART H

(a) *Section 923.71—Recommended Format for Program Submission.* (1) One reviewer commented that the section is unclear in differentiating requirements from recommendations.

NOAA response. Paragraph (a) clearly states this section is intended as guidance.

(2) One commentator suggested that as part of its submission, a State should be required to include evidence that it has the capability in terms of staffing and funding to implement the program. This reviewer also recommended that States be required to describe how they intend to allocate staff and money to implement the program.

NOAA response. While there is no statutory basis to require this information as part of the program submission, this information is contained in the separately submitted grant application for program implementation funds. See § 923.95(c).

(b) *Section 923.72—Review/Approval Procedures.* (1) One reviewer suggested that paragraph (a) should include a checklist of findings required pursuant to sections 305 and 306 of the Act. This reviewer also suggested that a State be provided an itemization of deficiencies if its program is disapproved.

NOAA response. The checklist of findings already can be found in the chart that is part of § 923.71. The recommendation that States be advised of deficiencies precluding approval has been added to paragraph (f).

(2) Two reviewers suggested that paragraph (b) indicate that the review and comment periods noted therein are based on the requirements of NEPA and CEQ guidelines.

NOAA response. This suggestion has been adopted.

(3) One commentator suggested that OCZM assume the responsibility for printing the Final Environmental Impact Statement (FEIS).

NOAA response. Paragraphs (a) and (c) have been revised to indicate that either the State or OCZM will print the DEIS and FEIS, depending on State capabilities.

(c) *Section 923.73—Miscellaneous.* (1) One reviewer suggested this section indicate the conditions that could extend the review procedures.

NOAA response. This is unnecessary as these conditions already are discussed in § 923.72.

(d) *Sections 923.74-923.77—Preliminary Approval.* (1) As noted in the discussion under major changes these sections now contain the information on preliminary approval previously contained in 15 CFR Part 920.

SUBPART I

(a) In the draft regulations issued August 29, 1977, this subpart appeared as Subpart J. Accordingly, comments addressed to Subpart J of the draft regulations are responded to hereunder.

(b) For reasons cited in major changes above, § 923.91 of the draft regulations dealing with review of performance of approved programs has been dropped.

(c) *Section 923.80—General.* One commentator suggested that before any refinement or amendment is approved by the Assistant Administrator, Federal agencies should be notified and consulted.

NOAA response. In the case of amendments, Federal agencies are notified and consulted before the Assistant Administrator takes action. In the case of refinements, notification of Federal agencies occurs after the Assistant Administrator takes action due to the minor nature of the change involved.

(d) *Section 923.81—Amendments of Modifications to Approved Management Programs.* (1) One reviewer suggested "and/or" in paragraph (b)(3) be changed to "and."

NOAA response. This change has been made.

(2) One commentator suggested that the requirement for notifying those affected by changes to a State's management program be made stronger.

NOAA response. The requirement in paragraph (c)(4) for public notice and a discussion of the degree and nature of public interest is sufficiently strong.

(e) *Section 923.82—Refinements to Approved Management Programs.* (1) One reviewer objected to this entire section and suggested OCZM clarify what type of action constitutes a refinement.

NOAA response. Section 923.80 has been rewritten to provide a rather extensive list of examples of actions that would constitute changes to the management program. Whether these changes represent amendments or refinements is to be based on the criteria contained in §§ 923.81(b) and 923.82(b). As § 923.80(e) indicates, the designated State agency has the responsibility for making the initial determination with the Assistant Administrator retaining the responsibility of reviewing the correctness of this determination.

(2) Two commentators suggested public notice be given of a State's request for refinements. Another reviewer requested notification be provided Federal agencies.

NOAA response. Paragraph (c)(2)(iii) has been revised to require an indication that the public and affected parties have been informed of the proposed change.

(3) One commentator suggested an additional requirement be added to paragraph (c)(2) that States include, as part of their request for a refinement, a determination that there are no significant changes in previously approved intergovernmental relationships or if there are changes, these have been concurred with by the affected parties.

NOAA response. This recommendation has been adopted as a new paragraph (v).

(f) *Section 923.83—Termination and Withdrawal of Administrative Funding.* (1) One reviewer requested clarification of the effect of termination of funding on the Federal consistency provisions. Two other commentators suggested a provision be added to notify Federal agencies when funding is terminated.

NOAA response. Paragraph (b)(2) has been revised to indicate that Federal consistency requirements no longer apply once funding is terminated. Notice of terminations will be placed in the FEDERAL REGISTER in order to apprise all interested parties, including Federal agencies.

(2) One reviewer suggested that interested parties be invited to comment on a State's failure to comply with its approved management program.

NOAA response. Opportunity for the public and other interested parties to comment already is provided in connection with public sessions sponsored annually by OCZM and the State to review the State's performance pursuant to its approved management program.

(3) One reviewer suggested that the Assistant Administrator should have more than just the ability to recommend termination to the NOAA Grants Office, as provided in paragraph (b)(2). This reviewer maintained the Assistant Administrator should be able to make and implement a decision to terminate funding.

NOAA response. Under NOAA grants management procedures, official notification of grant terminations come from the NOAA Grants Office.

SUBPART J

(a) In the draft regulations issued August 29, 1977, this subpart appeared as Subpart I. Accordingly, all comments addressed to Subpart I of the draft regulations are responded to hereunder.

(b) As noted in major changes above, the information in 15 CFR 920.50-920.61 pertaining to applications for program development and preliminary approval grants pursuant to subsections 305 (c) and (d) of the Act respectively is now contained in this subpart, especially §§ 923.92(b), 923.96, 923.97, and 923.99.

(c) *Section 923.90—General.* One reviewer suggested language to require adequate notice be given States in the event the Federal share of a grant will be less than the eighty (80) percent share allowed under the Act.

NOAA response. The reviewer has not suggested what would constitute adequate notice. Present OCZM practice is to advise States of the Federal rate in advance of submission of applications by a State. Finally, it should be noted that the language of subsections 305(c) and 306(a) with respect to the Federal share is permissive. In other words, it sets 80 percent as a maximum.

(d) *Section 923.91—Administration of the Program.* No comments.

(e) *Section 923.92—State Responsibility.* (1) One reviewer suggested that the initial grant, signed by the Governor, identify administrative personnel authorized to request amendments.

NOAA response. This comment is more appropriate to section 923.81 where, it should be noted, paragraph (c)(1) has been revised to allow amendments to be submitted by the head of the administering agency designated by the Governor.

(2) Two reviewers requested clarification as to how funding requests for programs authorized under other sections of the Act could be coordinated with requests for program development or implementation funds. One of these reviewers suggested that paragraph (c) refer to the State matching share as well as the Federal portion of a grant.

NOAA response. The requested clarification regarding coordinating funding requests has been added to § 923.95(h) where it is more appropriate. The suggested clarification to paragraph (c) has been adopted.

(f) *Section 923.95—Eligible Costs.* (1) Five commentators questioned OCZM's interpretation of eligible program implementation costs as being too restrictive and not helpful in carrying out a State's management program. These commentators suggested that limited construction costs should be allowed to achieve program objectives, particularly in areas designated for preservation or restoration.

NOAA response. Section 923.95 has been substantially revised in light of these comments, especially paragraphs (c)-(f).

(2) One reviewer suggested that equipment purchases of $1,000 or more should be the amount at which NOAA approval would be required, rather than the $500 in proposed paragraph (c) (now paragraph (g)).

NOAA response. This suggestion has been adopted.

(3) One commentator suggested the term "administrative funding" was a

poor term as it implied to the reviewer that only personnel costs could be funded with an administrative (section 306) grant.

NOAA response. NOAA has clarified the purposes to which section 306 funding can be put in paragraphs (c)-(e). In addition, § 923.90(e) notes that the terms "administrative grant" and "implementation grant" are used interchangeably.

(g) *Section 923.102—Grant Amendments.* One reviewer objected to the fact that grantees would be advised of disposition on their grant amendment requests (as distinct from program amendment requests) within a thirty (30) day period and requested a shorter notification period.

NOAA response. Given the fact that all grant amendment requests must go through the NOAA Grants Office and that Office handles grants activities for all NOAA funding programs, 30 days is a reasonable amount of time to allow for processing of grant amendment requests.

PUBLIC REVIEW AND COMMENT

NOAA invites public review and comment on these interim final regulations so they again may be modified, if necessary and where legally permissible, to fully satisfy the requirements of the Act in a manner which addresses the concerns of all parties affected by the regulations. Written comments should be submitted to: State Programs, Attention: Carol Sondheimer, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street NW., Washington, D.C. 20235, on or before April 30, 1978. Requests for meetings to discuss these regulations during this comment period may be made in writing or by phone to Carol Sondheimer, 202-634-1672. Following the close of the comment period, and after review of comments, these regulations may be amended and will be published as final regulations in the FEDERAL REGISTER.

Dated: February 22, 1978.

T. P. GLEITER,
Assistant Administrator for Administration.

PART 923—COASTAL ZONE MANAGEMENT PROGRAM APPROVAL REGULATIONS

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AUTHORITY: Secs. 305, 306, 307, and 312, Coastal Zone Management Act of 1972, Pub. L. 92-583, 86 Stat. 1280, as amended by Pub. L. 94-370, 90 Stat. 1013.

Subpart A—General

§ 923.1 Purpose.

(a) The primary purpose of these regulations is to set forth the criteria by which State programs submitted to the Assistant Administrator for management program approval pursuant to section 306 of the Act will be evaluated. These regulations also establish the procedures by which States meeting the approval criteria may apply for administrative grants pursuant to subsections 306 (a) and (h) of the Act. Also included in these regulations are the procedures by which programs submitted for preliminary or full approval pursuant to sections 305(d) or 306 of the Act, respectively, will be reviewed; the conditions under which approved programs may be altered; and the conditions under which grants may be terminated.

These regulations also establish the procedures for States to apply for program development, preliminary approval or program implementation grants pursuant to subsections 305(a), 305(d) and 306 of the Act, respectively.

(b) Sections 305, 306 and 307 of the Act set forth requirements which must be fulfilled as a condition of program approval. The specifics of these requirements are set forth below in these groupings: General Requirements; Uses Subject to Management; Special Management Areas; Boundaries; Authorities and Organization; Coordination, Public Involvement and National Interests; and Miscellaneous. All relevant sections of the Act are dealt with under one or more of these groupings but not necessarily in the order in which these sections appear in the Act.

(c) In summary, the requirements for program approval are that a State develop a management program that:

(1) Identifies and evaluates those coastal resources recognized in the Act that require management or protection by the State;

(2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;

(3) Determines specific uses and special geographic areas that are to be subject to the management program,

based on the nature of identified coastal concerns. The basis for managing uses (or their impacts) and areas should be based on resource capability and suitability analyses, socio-economic considerations and public preferences;

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and

(6) Includes sufficient legal authorities and organizational arrangements to implement the program and to insure conformance to it.

In arriving at these substantive aspects of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, State, interstate and Federal agencies.

(d) Subparts A-D (§§ 920.1-920.32) of the 15 CFR Part 920 Regulations pertaining to program development are superceded by the requirements contained herein. Subpart E (§§ 920.40-920.43) of the 15 CFR Part 920 Regulations dealing with preliminary approval pursuant to subsection 305(d) of the Act have been incorporated herein as part of Subpart H (§§ 923.74-923.77). Subpart F (§§ 920.50-920.61) dealing with applications for program development grants have been included herein in Subpart J (§§ 923.96-923.102).

(e) Care has been taken in the use of the following words: "must," "shall," "provided that," "may," and "should." Wherever possible the words "must," "shall," and "provided that" appear in sections entitled Requirement. However, even when such words appear in Comment sections, they shall be interpreted as requirements of these regulations. The words "should" or "may" are to be interpreted as recommendations, and not as requirements for program approval.

(f) States should note that, while they must meet the requirements of these regulations, the presentation of how these requirements are met—either to the Assistant Administrator or to the public—need not be in the order or terminology used herein. (See section 923.71 for further discussion of the program submission format.)

§ 923.2 Definitions.

(a) The term "Act" means the Coastal Zone Management Act of 1972, as amended.

(b) The term "Secretary" means the Secretary of Commerce or his/her designee. With the exception of the mediation functions discussed in section 923.54, all functions of the Act have been vested in the Assistant Administrator for Coastal Zone Management based on duly executed delegations of authority from the Secretary to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) by Amendment 5 of the Department of Commerce Organizational Order 25-5A, dated June 3, 1977; and from the Administrator to the Assistant Administrator for Coastal Zone Management by NOAA Circular 78-10.

(c) The term "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) The term "relevant Federal agencies" means those Federal agencies with programs, activities, projects or regulatory, financing or other assistance responsibilities, in the following fields which could impact or affect a State's coastal zone:

(1) Energy production or transmission,

(2) Recreation of an interstate nature,

(3) Interstate transportation,

(4) Production of food and fiber,

(5) Preservation of life and property,

(6) National defense,

(7) Historic, cultural, esthetic and conservation values,

(8) Mineral resources and extraction, and

(9) Pollution abatement and control.

The following are defined as relevant Federal agencies:

Department of Agriculture;
Department of Commerce;
Department of Defense;
Department of Energy;
Department of Health, Education, and Welfare;
Department of Housing and Urban Development;
Department of the Interior;
Department of Transportation;
Environmental Protection Agency;
Nuclear Regulatory Commission;
General Services Administration.

Should governmental reorganization occur, relevant Federal agencies shall be those with programs, activities, projects or responsibilities in the fields cited above. States should include other Federal agencies as appropriate to their program development or implementation efforts.

(e) The term "Federal agencies principally affected" shall mean the same as "relevant Federal agencies." The Assistant Administrator may expand upon the term for purposes of reviewing the management program and environmental impact statement.

(f) The term "Coastal State" means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound or one or more of the Great Lakes. Pursuant to section 304(3) of the Act, the term also includes Puerto Rico, the Virgin Islands, Guam and American Samoa. Pursuant to section 703 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the term also includes the Northern Marianas.

(g) The following terms, as used in these regulations, have the same definition as provided in section 304 of the Act.

(1) Coastal zone,
(2) Coastal waters,
(3) Estuary,
(4) Land use,
(5) Water use,
(6) Management program.

§ 923.3 General requirements.

(a) *Requirement.* In addition to the specific requirements related to individual elements of a State's coastal management program (such as those related to boundaries, areas of particular concern, legal authorities, etc.), the approvability of any State program, pursuant to section 306 of the Act, will be determined by the Assistant Administrator in accordance with the following general requirements:

(1) That the management program is comprehensive. It must address and provide for the management of those significant resources, uses and areas that the State has determined, through its development process and in consultation with all relevant interests as required by the Act and these regulations, make its coastal zone a unique, vulnerable or valuable area requiring various forms of management;

(2) That the policies, standards, objectives and criteria upon which decisions purusant to the program will be based are articulated clearly and are sufficiently specific to provide (i) a clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and (ii) a clear sense of direction and predictability for decision makers who must take actions pursuant to or consistent with the management program; and

(3) That there are sufficient policies of an enforceable nature to insure the implementation of and adherence to the management program.

In addition to sufficient enforceable policies to constitute an approvable program, States may include policies of an enhancement or horatory nature. (See discussion in paragraph (h) below.)

(b) *Comment.* Statutory Citation, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: (1) the state has developed and adopted a management program for its coastal zone * * * which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

(c) *Requirement.* In determining resources, uses and areas to be subject to the management program and appropriate management thereof, as articulated in the program's policies and implemented in the program's authorities, States shall take into consideration the findings of Section 302 of the Act that led Congress to find a national interest in providing for the effective management of the Nation's coastal resources. The Act emphasizes that important ecological, cultural, historic and aesthetic values such as living marine resources, wildlife habitats, public and open space, and nutrient rich areas are being lost or adversely affected by population growth and economic development in the coastal zone. The Act clearly envisions that such activities as population growth and economic development will occur in a manner that recognizes and reflects the findings of Sections 302 of the Act.

(d) *Comment.* Statutory Citation, Section 303:

The Congress finds that—

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone,

(b) The coastal zone is rich in a variety of natural, commercial, recreational, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation;

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion;

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations;

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost;

(f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values;

(g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate; and

(h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

(i) The national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet state and local needs resulting from new or expanded energy activity in or affecting the coastal zone.

(e) *Comment. Statutory Citation,* Section 303:

The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

(f) *Requirement.* Particular attention shall be devoted to subsection 303(b) of the Act which calls for (i) the ability to manage coastal land and water resources based on (ii) ecological, historical, cultural, esthetic and economic considerations. It is impossible to specify by regulation the relevant scope, priority and type of such considerations for each coastal State, given significant differences in the biophysical characteristics of the coastal zone, the quantity, quality and distribution of coastal resources located therein and the uses of or conflicts over use of these diverse resources. At a minimum, however, States shall include three broad classes of policies in their management program in order to provide a framework for the exercise of various management techniques governing coastal resources, uses and areas:

(1) *Resource policies* are those directed toward the management and conservation of valuable or vulnerable coastal resources such as wetlands, floodplains, estuaries, intertidal areas, beaches and dunes, barrier islands, cliffs and bluffs, other areas subject to erosion or accretion, areas containing fishery, spawning and harvesting grounds, other wildlife habitats including those of endangered species, and esthetic, cultural and historic resources.

(2) *Coastal development policies* are those that address such matters as shorefront access, ports and harbors, energy facilities, coastal dependency of large-scale industrial, commercial, residential and institutional developments, mineral extraction, on-shore OCS-related development; and

(3) *Government process policies* are those which address such matters as the roles and responsibilities of different levels of government, or clarification and simplification of regulatory and permitting procedures.

(g) *Comment.* State programs are not required to contain policies addressing all resources, uses, or processes potentially encompassed by the three general categories above. However, the Assistant Administrator will review management programs to ensure that major coastal resources of more than local significance in a State and uses with direct and significant impacts on coastal waters in that State are addressed by appropriate policies in the program.

(h) *Comment.* Some policies must be of an enforceable nature (as, for example, policies derived from regulatory statutes) and others may be of an enhancement nature (as, for example, policies that encourage or state priorities for certain activities in a certain manner or area, or policies that involve planning, financial, or technical assistance), assuming there are sufficient enforceable policies to find the program approvable. Two hypothetical examples follow of an enforceable and enhancement policy respectively:

(1) It is the policy of the State to preserve wetlands for their biological productivity, habitat values, and storm buffer functions. To this end, no activity shall occur in a coastal wetland without first receiving a permit from agency X.

(2) It is the policy of the State to encourage location of new, coastal-dependent industries in areas already served by necessary and adequate infrastructure such as roads and sewage treatment facilities.

Whether policies must be enforceable rather than encouragement depends on the nature of the concern. Generally, it should be anticipated that policies relating to resources will need to be of an enforceable nature (as, for example, the ability to exercise permit requirements). The Assistant Administrator will determine that the scope and enforceability of a State's program are adequate based on the enforceable policies of the program.

(i) *Comment.* With specific reference to wetlands and floodplains located in a State's coastal zone, the Assistant Administrator will review a State's management program to see that it

contains policies either directly addressing appropriate uses of or in coastal floodplains and wetlands or addressing acceptable and unacceptable impacts in those areas. These policies are deemed necessary in order that the Assistant Administrator may fulfill his/her responsibilities pursuant to Presidential Executive Orders on wetland and floodplains issued May 24, 1977 which provide, with respect to wetlands in relevant part, that:

(1) Each [Federal] agency shall provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands, in carrying out the agency's responsibilities for * * * conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating and licensing activities * * *

(5) In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge, pollution, flood and storm hazards, and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and flood and fiber resources, and

(c) other uses of wetlands in the public interest including recreational, scientific and cultural uses.

(j) *Comment.* With respect to floodplains, the Presidential Executive Order provides in relevant part that:

(1) Each [Federal] agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying its responsibilities for * * * conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating and licensing activities.

(2) In carrying out the activities described in Section (1) of this Order, each agency has a responsibility * * * to ensure that its planning programs and budget requests reflect consideration of flood hazards and flood plain management * * *

(4) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved * * *

(6) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

(k) *Comment.* With respect to the definition of "floodplain" in (6) above, it is recognized that in some States, their coastal zone boundaries may not be as extensive as the 100-year floodplain, nor do these boundaries necessarily have to include floodplains adjoining inland waters. However, to the extent a State's coastal zone does include floodplain areas as defined above, policies affecting those areas must be compatible with the intent of the Executive order.

Subpart B—Uses Subject to Management

§ 923.10 General.

This subpart deals with land and water uses which, because of their direct and significant impacts on coastal waters, are subject to the terms of the management program. Determination of these uses will assist in determining the appropriate coastal management boundary. This subpart deals in full with the requirements of subsection 305(b)(2), Uses Subject to Management and 305(b)(8), Energy Facility Planning, and deals in part with the requirements of subsection 306(e)(2), Uses of Regional Benefit.

§ 923.11 Uses subject to management.

(a) *Requirement.* The essential requirements of this subpart are: (1) To determine and identify which uses shall be subject to the terms of the management program pursuant to subsection 305(b)(2) of the Act.

(2) To establish the bases for policies, management authorities, and techniques that will govern whether and how uses will be allowed, conditioned or denied; and

(3) To assure that these policies and authorities incorporate a sufficient range of considerations to address the national findings and policies of sections 302 and 303 of the Act.

(b) *Comment.* In order to meet the requirements of (a)(1) above, States should inventory natural and man-made coastal resources and should analyze the quality, location, distribution and demand (including claimed national interests) for these resources as well as the need for and nature of coastal management. Assessments derived from these inventories and analyses should form one basis for determining appropriate uses subject to the management program.

(c) *Comment.* In addition, States should consider the potential for direct and significant coastal impacts on coastal waters from uses of lands, including, but not limited to, the following:

(1) Residential and commercial developments such as subdivisions, high-rise apartments or hotels, trailer parks and second-home developments, and shopping centers;

(2) Industrial developments, such as tank farms and refineries, power plants, manufacturing complexes, industrial parks, onshore and offshore port facilities, mineral and sand extraction operations; liquified natural gas (LNG) facilities, petrochemical plants, and Outer Continental Shelf (OCS) development;

(3) Recreational facilities such as beaches, amusement parks, marinas and other boating facilities;

(4) Public facilities and public works such as schools, hospitals, government buildings, dams and water treatment facilities; and

(5) Transportation facilities such as highways, railroads, airports, ports and harbors.

(d) *Comment.* In determining if uses and their management are sufficiently comprehensive, the Assistant Administrator will consider whether significant coastal-related issues raised by the public and/or governmental entities during the course of program development or related to the findings and national policies of Sections 302 and 303 of the Act.

§ 923.12 Use permissibility.

(a) *Requirement.* In order to meet the requirements of subsection 305(b)(2) of the Act, and the associated requirements of § 923.11(a)(2), States must develop policies and procedures by which uses, determined to be subject to the managment program, will be allowed, conditioned, modified, encouraged or prohibited. Policies and procedures regarding management of uses or their impacts must be capable of effective application at the time of program approval.

(b) *Comment.* Statutory Citation, Subsection 305(b)(2):

The management program for each coastal state shall include * * * (2) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal water.

(c) *Comment.* The policies and procedures called for in paragraph (a) above should be based on the following types of analyses: (1) Capability and suitability of resources types to accommodate existing or projected uses;

(2) Environmental impacts on coastal resources;

(3) Compatability of various uses with adjacent uses or resources;

(4) Evaluation of inland and other location alternatives;

(5) Water dependency of various uses and other social and economic considerations.

(d) *Comment.* Management of uses based on the policies and procedures noted in (a) above, including performance standards, shall take into account the full range of considerations called for in Sections 302, 303 and 307(f) of the Act. Examination of the following representative factors is suggested:

(1) Air and water quality;

(2) Historic, cultural and aesthetic resources where coastal development is likely to affect these resources;

(3) Open space or recreational usage of the shoreline where increased access to the shorefront is a particularly important concern;

(4) Floral and faunal communities where loss of living marine resources or threats to endangered or threatened coastal species are particularly important concerns; and

(5) Water dependency of various activities and uses, including those related to energy.

(e) *Comment.* To the extent a State's management program policies are generalized, performance standards that will be used to enforce these policies will need to be sufficiently explicit and specific that persons affected by the management program will have a reasonable understanding of what uses would be permitted in which locations of the coastal zone and under what conditions. Further, while performance standards represent an acceptable procedure for managing uses, they do not substitute for the requirement of § 923.11(a)(1) to identify uses subject to the management program.

923.13 Uses of regional benefit.

(a) *Requirement.* In order to meet the requirements of subsection 306(e)(2) of the Act, State's must:

(1) Identify what constitute uses of regional benefit; and

(2) Identify methods that will assure that local land and water use regulations do not unreasonably restrict or exclude land and water uses of regional benefit.

(b) *Comment.* Statutory Citation, Subsection 306(e)(2):

> Prior to granting approval, the Secretary shall also find that the program provides * * * (2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

(c) *Comment.* This section of the regulations provides guidance on how States may meet the requirements of (a)(1) above. Section 923.43 contains commentary addressing the requirements of (a)(2) above.

(d) *Comment.* States have a number of options with respect to identifying uses of regional benefit as required in (a)(1) above. These options include, but are not limited to, those discussed in this paragraph. Whatever approach a State chooses, the basic criteria for identifying uses of regional benefit should be two-fold: (1) Effect on more than one local unit of government (effect may be considered to be of a multi-county or intrastate nature), and (2) direct and significant impact on coastal waters. Using these criteria, States could identify those uses they perceive will affect or produce some regional benefit in terms of providing services or other benefits to citizens of more than one unit of local, general-purpose government (excluding situations such as cities and counties that exercise jurisdiction over the same geographic areas). Such activities as regional waste treatment plants, multi-county garbage disposal sites or landfills, State highways, or multi-county parks and beaches might be identified under this approach.

These same uses or other uses might be identified on the basis of plans adopted by areawide agencies designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, or as defined in other regional plans such as Statewide Comprehensive Outdoor Recreation Plans (SCORPs), Statewide transportation plans, or regional wastewater treatment plans (funded pursuant to section 208 of the Federal Water Pollution Control Act). Where States follow this approach, they should coordinate the requirements of this section with those of § 923.56 having to do with plan coordination.

As another approach, States may choose to define uses of regional benefit to include facilities in which there may be a national interest in their planning and siting. Under this approach, such facilities as ports, highways, energy production and transmission facilities, national seashores, parks and forests, and military bases could be identified as uses of regional benefit. (See § 923.52 which discusses consideration of facilities in which there may be a national interest.)

(e) *Comment.* Once uses of regional benefit have been identified, States must provide a method for assuring local regulations do not unreasonably restrict or exclude such uses. Acceptable alternatives for meeting this requirement are discussed in § 923.43 of subpart E—Authorities and Organization.

§ 923.14 Energy facility planning process.

(a) *Requirement.* In order to meet the requirements of subsection 305(b)(8) of the Act, States must develop a planning process which is capable, at a minimum, of anticipating and managing the impacts from energy facilities in or affecting a State's coastal zone. This process must include the following elements:

(1) Identification of energy facilities which are likely to locate in, or which may significantly affect, a State's coastal zone;

(2) Procedures for assessing the suitability of sites for such facilities;

(3) Articulation of State policies for managing energy facilities and their impacts, including a clear articulation of policies regarding conditions that may be imposed on site location and facility development;

(4) Identification of how interested and affected public and private parties may be involved in the planning process, and a discussion of the means for continued consideration of the national interest, in the planning for and siting of energy facilities that are necessary to meet more than local requirements, after program approval; and

(5) Identification of legal authorities and management techniques that will be used to implement State policies and procedures.

(b) *Comment.* Statutory Citation, Subsection 305(b)(8) and (9):

> The management program for each coastal state shall include * * * (8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities * * * (9) No management program is required to meet the requirements in paragraphs * * * (8) * * * before October 1, 1978.

(1) The purpose of identifying energy facilities which may significantly affect the coastal zone is to assure the consideration of energy facilities as land or water uses likely to have direct and significant impacts on coastal resources and therefore subject to the management program. Since the specific planning process called for in this section is an integral part of the requirements of this subpart, many of the requirements contained in (a) (1) and (2) above can be met by completing the work called for in §§ 923.11 and 923.12. The coordination requirements in (a)(4) above can be fulfilled in large measure through adequate consultation pursuant to §§ 923.51 and 923.55. Further, because of the obvious linkage between subsections 305(b)(8) of the Act having to do with an energy facility planning process and 306(c)(8) having to do with consideration of national interests involved in planning for and siting of facilities, including energy facilities which may be more than local in nature, States should coordinate fulfillment of the requirements of this section with those of § 923.52—Consideration of National Interests.

(c) *Comment.* Since one of the objectives of implementing State coastal management programs is to bring about a greater degree of predictability with respect to what may occur in which areas of the coastal zone, and since many energy facilities are coastal dependent and may cause substantial impacts on coastal resources and adjacent land and water uses, States are encouraged, through establishment of this planning process, to be site-specific, especially in indicating areas that are appropriate or inappropriate for particular types of energy facilities. As a result of developing this required planning process, States should be able to specify the conditions that would either constrain or

lead to the siting of particular energy facilities in a State's coastal zone.

(d) *Comment.* To determine which energy facilities may significantly affect the coastal zone, as required in (a)(1) above, States must consider, at a minimum, those facilities listed in subsection 304(5) of the Act. These facilities include any equipment or facility which will be used or expanded primarily (1) in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of any energy resource, or (2) for the manufacture, production, or assembly of equipment, machinery, products or devices which are involved in any activity described in (1). This includes (i) electric generating power plants, (ii) petroleum refineries and associated facilities, (iii) gasification plants, (iv) facilities used for the transportation, conversion, treatment, transfer or storage of liquefied natural gas, (v) uranium enrichment or nuclear fuel processing facilities, (vi) oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases and refining complexes, (vii) facilities, including deepwater ports, for the transfer of petroleum, (viii) pipelines and transmission facilities, and (ix) terminals which are associated with the foregoing. States have the option of expanding this list for planning and management purposes to include any related or secondary energy activities, which a State feels may significantly affect its coastal zone.

(e) *Comment.* At a minimum, "significantly affect" shall be defined in terms of substantial or potentially substantial changes in coastal zone resources which could be affected by a proposed energy facility. These include changes in land, air, water, minerals, flora, fauna, noise, and objects of historic, cultural, archeological or aesthetic significance. States have the option of using a more expansive definition of "significantly affect" which could include any or all of the concepts in the National Environmental Policy Act of 1969 (Pub. L. 91-190, as amended). These concepts include the following: (1) Effects which are noteworthy in an overall, cumulative way, considering the impacts of a given energy facility and related facilities, either existing or contemplated; (2) effects which may be positive, negative or both; (3) effects which may come about or increase in magnitude because of the particular location of an energy facility; and (4) effects which cover a broad range of environmental, social and economic impacts.

(f) *Comment.* In developing a procedure for assessing the suitability of sites for energy facilities, as required in (a)(2) above, it will be important to create a planning process that takes adequate account of all the potential changes noted in paragraph (e) of this section, as well as any other economic, social or environmental factors the State chooses to consider significant. This procedure must also include a capability to evaluate alternative sites and to determine if a potential site is appropriate given these assessments. This assessment procedure should be designed to evaluate, to the extent practicable, the costs and benefits of proposed and alternative sites in terms of State and national interests as well as local concerns.

(g) *Comment.* In articulating State policies and management techniques, as required in (a) (3) and (5) above, States should indicate whether it is State policy to permit, discourage or prohibit major classes of energy facilities (identified pursuant to (a)(1) above) in the coastal zone. If so, States should articulate clearly any and all conditions that may be attached to siting, including, for example, conditions on site development or internalization of costs, where such conditions exist as part of a State's energy facility planning process or policies.

(h) *Comment.* In articulating State policies and management techniques as required in (a) (3) and (5) above, State coastal planning or management agencies are encouraged to develop these in consultation and cooperation with other State, local and Federal agencies. General consultation requirements for program development, of which this consultation should be considered a part, are discussed more fully in § 923.51. Depending on the approach taken to energy facilities management, this consultation and coordination should include, but need not be limited, to procedures for: (1) Assessing need/demand projections; (2) allocating these needs among coastal and inland locations; (3) identifying potential coastal impacts; and (4) determining site suitability of alternative locations for particular facilities. The actual analysis of particular sites may be accomplished using planning funds authorized under subsection 308(c) of the Act.

(i) *Comment.* The nature of State policies and management techniques that will be articulated as part of the overall management program will vary, depending on the approach taken to planning and management of energy facilities or their impacts, and the extent and type of energy facility siting procedures and impact management techniques already existing in a particular State. Accordingly, in meeting the requirements of § 923.41 to list relevant constitutional provisions, laws, regulations, judicial decisions and other appropriate official documents or actions, States must include those items specifically related to planning for, anticipating and managing energy facilities or impacts, including licensing or permitting procedures.

(j) *Comment.* In addressing the requirements of (a)(4) above, States should identify clearly the organizational structure and procedural means by which energy facility planning (including decisions made pursuant to that planning process) is carried out in the State. This should include a discussion of the respective roles of State agencies and their relationship to the lead agency and to the management program's requirements (as well as the respective roles and opportunity for participation by Federal agencies, local governments, other interested and affected public and private parties). Included in this discussion should be an explanation of the process by which the national interest in the planning for and siting of energy facilities, identified pursuant to § 923.52, can continue to be considered after program approval.

(k) *Comment.* State coastal zone management programs that are submitted and approved prior to October 1, 1978, may submit this planning element as a program amendment by, but no later than, September 30, 1978, or this element may be included as part of the basic program submission submitted and approved prior to October 1, 1978. State coastal zone management programs submitted prior to October 1, 1978, but approved on or after that date, must include this planning element as part of the basic program submission. State coastal zone management programs submitted for approval after October 1, 1978, must include this element as part of the basic program submission.

Subpart C—Special Management Areas

§ 923.20 General.

(a) This subpart deals with areas that are of particular concern because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond a State's general planning and regulatory system as proposed in the management program. As a result, these areas require special management attention within the terms of the State's overall coastal program. This special management may include regulatory or permit requirements applicable only to the area of particular concern. It also may include increased intergovernmental coordination, technical assistance, enhanced public expenditures, or additional public services and maintenance to a designated area. This subpart deals with the following interrelated subsections of the Act: 305(b)(3)—Geographic Areas of Particular Concern; 305(b)(5)—Guidelines on Priorities of Uses; 305(b) (7)—Shorefront Access and Protection Planning; 305(b) (9)—Shoreline Erosion Planning; and 306(c) (9)—Areas for Preservation and Restoration.

§ 923.21 Areas of particular concern.

(a) *Requirement.* In order to meet the requirements of subsections 305(b)(3) and (5) of the Act, States must:

(1) Designate geographic areas that are of particular concern, on a generic or site-specific basis or both;

(2) Describe the nature of the concern and the basis on which designations are made;

(3) Describe how the management program addresses and resolves the concerns for which areas are designated; and

(4) Provide guidelines regarding priorities of uses in these areas, including guidelines on uses of lowest priority.

(b) *Comment.* Statutory Citation, Subsection 305(b)(3):

The management program for each coastal state shall include * * * (3) An inventory and designation of areas of particular concern within the coastal zone.

(c) *Comment.* The importance of designating areas of particular concern for management purposes and the number and type of areas that should be designated is directly related to the degree of comprehensive controls applied throughout a State's coastal zone. Accordingly, where a State's general coastal management policies and authorities are insufficient to address the nature of a State's concern in a particular area or type of area, then designation of areas of particular concern is especially important since that designation will include more specific policies and authorities that also will govern management within those areas. Where a State's general coastal management policies and authorities are broad and address State and national concerns comprehensively, relatively less emphasis need be placed on designation of areas of particular concern. Attention is invited to § 923.23 which discusses additional designations States may make beyond those required by this section.

(d) *Comment.* Designation.

(1) In developing the criteria for designating areas of particular concern and in making the designations, States shall inventory their natural and manmade coastal zone resources and shall consider whether the following represent areas of concern requiring special management:

(i) Areas of unique, scarce, fragile or vulnerable natural habitat, unique or fragile, physical, figuration (as, for example, Niagara Falls), historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National Register of Historic Places.)

(ii) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife and endangered species and the various trophic levels in the food web critical to their well-being.

(iii) Areas of substantial recreational value and/or opportunity;

(iv) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(v) Areas of unique hydrologic, geologic or topographic significance for industrial or commercial development or for dredge spoil disposal;

(vi) Areas of urban concentration where shoreline utilization and water uses are highly competitive;

(vii) Areas of significant hazard if developed, due to storms, slides, floods, erosion, settlement, and salt water intrusion;

(viii) Areas needed to protect, maintain or replenish coastal lands or resources including coastal flood plains, aquifers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, offshore sand deposits, and mangrove stands.

(2) Designation does not necessarily require specific gubernatorial or legislative action. Such action is necessary only to the extent the appropriate management of designated areas cannot be assured without such action.

(3) Designations may be generic (i.e., by type of area such as all wetlands, or all port areas) or they may be site-specific (as for example historic area x in county y) or they may be both. Irrespective of whether these designations are generic or site-specific, States must indicate the nature of the concern. This will accomplish two purposes: (i) indicate why areas or types of areas have been selected for special management attention and (ii) provide a basis for articulating appropriate management policies and use guidelines.

(4) Once designated, areas of particular concern must be identified by location (if site specific) or category of coastal resources (if generic) in sufficient detail that affected landowners, governmental entities and the public can determine with reasonable certainty if a given area is or is not designated. Maps that indicate the location of designated areas or types of areas are encouraged as part or a State's program submission.

(5) Some States may wish to involve local governments, other State agencies, Federal agencies and/or the public in the process of designating areas of particular concern. Such efforts are encouraged. In these cases, the State shall establish guidelines regarding the purposes, criteria and procedures for nomination and selection of such areas.

§ 923.22 Priorities of uses.

(a) *Requirement.* At a minimum, priority of use guidelines, including uses of lowest priority, must be established for areas of particular concern designated pursuant to § 923.21. States may establish priority use guidelines that apply throughout the coastal zone and are encouraged to do so, especially as an aid to resolving use conflicts.

(b) *Comment.* Statutory Citation, Subsection 305(b)(5):

The management program for each coastal state shall include * * * (5) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(c) *Comment.* Within areas of particular concern there are three main purposes of the guidelines on priority of uses will serve:

(i) To provide a basis for special management in areas of particular concern;

(ii) To provide a common reference point for resolving conflicts, and

(iii) To articulate further the nature of the interests to be promoted, prohibited or managed as a result of designation.

(d) *Comment.* One of the purposes in providing guidelines regarding uses of lowest priority in a specific area or for a specific type of area is to guide resolution of conflicts when two or more uses are competing for the same area. Where States are concerned about prohibiting or strictly controlling particular uses or types of uses in areas of particular concern, such uses should not be listed as uses of lowest priority but should be separately prohibited or restricted.

(e) *Comment.* Another purpose of priority use guidelines is to express the State's management concerns and policies on how resources should be protected and/or developed. When an identified use is determined to be of lowest priority in a geographic area, based on the results of resource inventories and analyses, program policies and other controls should be used to guide such uses to areas where the use will be more compatible with resource capability and suitability, and consequently will receive a higher priority.

(f) *Comment.* As with other guidelines of this general type, guidelines for priority of uses need not be determinative in all cases. However, they should be regarded as strongly advisory to decision makers carrying out the management program and the enforceable policies therein and may provide the basis for legal challenge to actions taken inconsistent with the guidelines.

§ 923.23 Other areas of particular concern.

(a) In addition to the designation of areas of particular concern required by § 923.21, States also may designate two other types of special management areas.

(1) One type comprises specific areas that are known to require additional or special management (e.g., urban waterfronts) but for which additional management techniques have not been developed or necessary authorities

have not been established at the time of program approval. For this category of areas of particular concern it is assumed that the appropriate management techniques, that meet all the requirements of § 923.21(a) above, will be developed during program implementation. If States designate areas of particular concern of this type, the Assistant Administrator will review the designations to determine that the reason for designation has been clearly stated, that a reasonable time frame and procedure have been established for developing and implementing appropriate management techniques, and that an agency (or agencies) capable of formulating the necessary management policies and techniques has been identified.

(2) The second type consists of a process for future designation of areas of particular concern after program approval. Establishment of such a process recognizes the evolving nature of management programs and the desirability of establishing a mechanism to address areas which may become a focus of State concern in the future. States that wish to establish a process for designating future areas of particular concern, that may be other than areas for preservation or restoration which are discussed on § 923.24 below, shall describe the criteria and procedures by which such designations can be made.

§ 923.24 Areas for preservation or restoration.

(a) *Requirement.* To meet the requirements of subsection 306(c)(9) of the Act, States must:

(1) Describe the criteria by which areas can be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or esthetic values; and

(2) Describe the procedures by which such designations can be made.

(b) *Comment.* Statutory Citation, subsection 306(c)(9):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * (9) The management program makes provisions for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or esthetic values.

(c) *Comment.* States that wish to establish a process for designating future areas of particular concern, that may be other than areas for preservation or restoration, shall describe the criteria and procedures by which such designations for other purposes can be made.

§ 923.25 Shorefront access and protection planning.

(a) *Requirement.* In order to meet the requirements of subsection 305(b)(7) of the Act and to coordinate these requirements with those of subsections 305(b)(3) and 306(c)(9), States must develop a planning process that can identify public shorefront areas appropriate for access or protection. This process must include:

(1) A procedure for assessing public areas requiring access or protection;

(2) A definition of the term "beach" and an identification of public areas meeting that definition;

(3) Articulation of enforceable State policies pertaining to shorefront access and protection;

(4) A method for designating shorefront areas (either as a class or site specifically) as areas of particular concern or areas for preservation or restoration, if appropriate; and

(5) An identification of legal authorities, funding programs and other techniques that can be used to meet management needs.

(b) *Comment.* Statutory Citation, Subsection 305(b)(7):

The management program for each coastal state shall include * * * (7) A definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

(1) The basic purpose in focusing special planning attention on shorefront access and protection is to express more than local concern with respect to additional access or protection needs for public beaches and other public coastal areas of environmental, recreational, historic, esthetic, ecological or cultural value and to include these areas for special management attention within the purview of the State's management program. If appropriate, this special management attention may be achieved by designation of public shorefront areas requiring additional access or protection as areas of particular concern or areas for preservation or restoration. Since the specific planning requirements called for in this section are closely related to the broader requirements for areas of particular concern and areas for preservation and restoration, many of the requirements called for in paragraph (a) above can be met by completing the work called for in §§ 923.21 and 923.24.

(c) *Comment.* In meeting the requirements of (a)(1) above, States should take the following into account:

(1) States should make use of the analyses and considerations of Statewide concern developed to meet the requirements of § 923.21 dealing with areas of particular concern. It also is recommended that information contained in State Outdoor Comprehensive Recreation Plans be considered.

(2) If islands are not considered areas of particular concern, in the context provided by § 923.21, then their protection needs should be addressed through this planning process. Analysis of the need and priority for protection will be useful in establishing eligibility for such funds as may be available for islands acquisition pursuant to subsection 315(2) of the Act.

(3) In developing a procedure for identifying access and protection needs, States should analyze (a) the supply of existing public facilities and areas, (b) the anticipated demand for future use of these facilities, and (c) the capability and suitability of existing areas to support increased access. Based on these and other considerations, as appropriate, the State's planning process shall include a description of appropriate types of access and protection, taking into account governmental and public preferences, resource capabilities and priorities.

(4) In determining access requirements, States should consider both physical and visual access. The emphasis, however, should be on the provision of increased physical access. Special attention should be given to recreational needs of urban residents for increased shorefront access. Physical access may include, but need not be limited to, footpaths, bikepaths, boardwalks, jitneys, rickshaws, parking facilities, ferry services and other public transport. Visual access may involve, but need not be limited to, viewpoints, setback lines, building height restrictions, and light requirements.

(5) In determining the needs for protection of public coastal areas, States should consider such factors as (a) environmental, esthetic or ecological preservation (including protection from overuse and mitigation of erosion or natural hazards), (b) protection for public use benefits (including recreational, historic or cultural uses), (c) preservation of islands, and (d) such other protection as may be necessary to insure the maintenance of environmental, recreational, historic, esthetic, ecological or cultural values of existing public shorefront attractions. Existing public shorefront attractions may be broadly construed to include, but need not be limited to: public recreation areas, scenic natural areas, threatened or endangered floral or faunal habitat, wetlands, bluffs, historic, cultural or archaeological artifacts, and urban waterfronts.

(d) *Comment.* With respect to the requirements of (a)(2) above, the purpose of defining the term "beach" is to aid in the identification of those existing public beach areas requiring further access and/or protection as a part of the State's management program. States should define "beach" in terms of characteristic physical elements (e.g., submerged lands, tidelands, foreshore, dry sand area, line of vegeta-

tion, dunes) or in terms of public characteristics (e.g., local, State or Federal ownership, or other demonstrated public interest such as easements, leases, licenses, or traditional and habitual usage). At a minimum, the definition of what constitutes a public beach shall be as broad as that allowed under existing State law or constitutional provisions. States should take into account special features such as composition (e.g., nonsand beaches), location (e.g., urban or riverine beaches), origin (e.g., manmade beaches) and fragility (e.g., areas of shifting dunes). Where access may be complicated by questions of ownership and use of the foreshore or dry sand beach, States are encouraged to define beach in terms of its component parts, especially at the mean high tide line, or the ordinary high water mark in the Great Lakes. Finally, in defining the term "beach," States should provide a rationale explaining the relationship between the definition developed and access and protection needs.

(e) *Comment.* With respect to the requirements of (a)(5) above, States should develop a procedure which will allow for the eventual identification of specific areas for which provision of access through acquisition will be appropriate during program implementation. In developing this procedure, States shall identify local, State or Federal sources for accomplishing particular access proposals. Particular attention should be given to coordination of management objectives with funding programs pursuant to subsection 315(2) of the Act, and pursuant to the Land and Water Conservation Fund (16 U.S.C. 460 et seq.) and other statutes as may be appropriate. The access referred to in this subsection is broader than the types of access that may be acquired using subsection 315(2) funds which is limited to the acquisition of lands or interests in lands for purposes of providing access to public shorefront or for the preservation of islands.

(f) *Comment.* State coastal zone management programs that are submitted and approved prior to October 1, 1978, may submit this planning element as a program amendment by, but no later than, September 30, 1978, or this element may be included as part of the basic program submission submitted and approved prior to October 1, 1978. State coastal zone management programs submitted prior to October 1, 1978, but approved on or after that date, must include this planning element as part of the basic program submission. State coastal zone management programs submitted for approval after October 1, 1978, must include this element as part of the basic program submission.

§ 923.26 Shoreline erosion/mitigation planning.

(a) *Requirement.* In order to meet the requirements of subsection 305(b)(9) of the Act and to coordinate these requirements with those of subsections 305(b)(3) and 306(c)(9), States must include a planning process that can assess the effects of shoreline erosion. Evaluation must include assessment of ways to mitigate, control or restore areas adversely affected by erosion. This process must include:

(1) A method for assessing the effects of shoreline erosion;

(2) Articulation of State policies pertaining to erosion, including policies regarding preferences for non-structural, structural and/or no controls;

(3) A method for designating areas for erosion control, mitigation and/or restoration as areas of particular concern or areas for preservation and restoration, if appropriate;

(4) Procedures for managing the effects of erosion, including non-structural procedures; and

(5) An identification of legal authorities, funding programs and other techniques that can be used to meet management needs.

(b) *Comment.* Statutory Citation, Subsection 305(b)(9):

> The management program for each coastal state shall include * * * (9) A planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

(1) The basic purpose in developing a process to evaluate and, if appropriate, to control and mitigate shoreline erosion is to assure consideration of erosion impacts within the purview of a State's management program. Since the specific planning requirements called for in this section are closely related to the broader requirements of areas of particular concern and areas for preservation and restoration, many of the requirements called for in paragraph (a) above can be met by completing the work called for in §§ 923.21 and 923.24.

(c) *Comment.* With respect to the requirements of (a)(1) above, States should consider the following: (1) Loss of land along the shoreline or along estuarine banks, whether this loss is caused by actions of man or by natural forces, and whether these actions are regularly occurring, cyclical, or one-time events; and (2) the cause of these effects (e.g., manmade vs. natural forces), the effects of erosion on adjacent land and water uses as well as the impacts of mitigation or restoration of eroded areas on adjacent shorelines, littoral drift, and other natural ecological processes such as accretion.

The purpose of such assessments will be to determine how, if at all, States will want to handle erosion control, mitigation and/or restoration.

(d) *Comment.* In addressing the requirements of (a)(2) above, States should consider non-structural and structural options as well as the possibility of allowing erosion and accretion to continue to occur without management intervention. It is not the intent of these planning requirements to imply that an appropriate State response to erosion necessarily requires control (either of a structural or non-structural nature). In some locations along a State's coast, it may be appropriate to articulate a policy of non-control, given the cause of erosion, the configuration of the coastline or the adverse impacts that may result from control techniques. An example of where a policy of non-control may be appropriate is along barrier islands where there is substantial natural erosion and accretion due to littoral drift. In cases where State policy is not to control erosion, either in selected locations or along the entire coastline, the rationale for such policy should be stated explicitly. In evaluating ways to control or lessen erosion impacts, either through non-structural or structural techniques, States should take into account such considerations as shoreline configuration, extent of the problem, costs of alternative solutions, and incorporation of existing management techniques. States also should take particular account of the National Flood Insurance Program (24 CFR 1909 et seq.), and regulations of the Federal Insurance Administration on flood-related erosion-prone areas (24 CFR 910.5).

(e) *Comment.* In addressing the requirements of (a)(3) above with respect to areas for preservation or restoration, States may consider complete re-establishment of the pre-erosion shoreline or other more limited rebuilding of an eroded area. Both natural and developed areas may be considered for restoration purposes. Due to restrictions on the use of section 306 funds (see § 923.95), not all means of restoration proposed by States may be eligible for section 306 funding, or funding under other sections of the Act. Despite this restriction on the use of section 306 funds, States should not feel restricted as to the means of restoration proposed as part of the management program and should give particular attention to coordination of shoreline erosion management objectives with funding programs pursuant to the U.S. Army Corps of Engineers Beach Erosion Control Program (33 U.S.C. 426 et seq.) and the Hurricane Protection Program (33 U.S.C. 701 et seq.) and other statutes as may be appropriate.

(f) *Comment.* State coastal zone management programs that are submitted and approved prior to October

1, 1978, may submit this planning element as a program amendment by, but no later than, September 30, 1978, or this element may be included as part of the basic program submission submitted and approved prior to October 1, 1978. State coastal zone management programs submitted prior to October 1, 1978, but approved on or after that date, must include this planning element as part of the basic program submission. State coastal zone management programs submitted for approval after October 1, 1978, must include this element as part of the basic program submission.

Subpart D—Boundaries

§ 923.30 General.

(a) There are four elements to a State's boundary: The inland boundary, the seaward boundary, areas excluded from the boundary, and, in most cases, interstate boundaries. Specific requirements with respect to procedures for determining these boundaries, and means for identifying these boundaries are discussed in the sections of this subpart that follow.

(b) *Comment.* Statutory Citation, Subsection 305(b)(1):

The management program for each coastal state shall include * * * (1) An identification of the boundaries of the coastal zone subject to the management program.

(c) *Comment.* Statutory Citation, Subsection 304(1):

The term "coastal zone" means the coastal waters (including the lands therein and thereunder), and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(d) *Comment.* Statutory Citation, Subsection 304(2):

The term "coastal waters" means (A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows and marshes, and (B) in other areas, those waters adjacent to shorelines which contain a measurable quantity or percentage of seawater, including but not limited to, sounds, bays, lagoons, bayous, ponds and estuaries.

§ 923.31 Inland boundaries.

(a) *Requirement.* The inland boundary of a State's coastal management area must include:

(1) Those areas the management of which is necessary now or is likely to be necessary in the near future to control uses which have direct and significant impacts on coastal waters, pursuant to § 923.11 of these regulations;

(2) Those special management areas identified pursuant to § 923.21;

(3) Transitional and intertidal areas—Areas subject to periodic or occasional inundation by tides, as, for example, coastal floodplains, storm surge areas, tsunami and hurricane zones, or washover channels.

(4) Salt marshes and wetlands—Areas subject to regular inundation of tidal salt (or Great Lakes) waters which contain marsh flora typical of the region.

(5) Islands—Bodies of land surrounded by water on all sides. In the case of Puerto Rico, the U.S. Virgin Islands, Hawaii, Guam, American Samoa and the Northern Marianas interior portions of the major island(s) may be excluded if uses of these lands do not cause direct and significant impacts on coastal waters.

(6) Beaches—The area affected by wave action directly from the sea. Examples are sandy beaches and rocky areas usually to a vegetation line.

(b) *Comment.* While the above elements represent the minimum area that must be included in a State's landward coastal management boundary, a State also may include the following within the management area:

(1) Watersheds—A State may determine some uses within entire watersheds have direct and significant impact on coastal waters. In such cases it would be appropriate to define the coastal zone as including these watersheds. However, while it is clear that large rivers can have a substantial effect on coastal waters, taken to its logical conclusion, this also could mean vast areas of the interior might have to be included in the coastal zone. Therefore, along major rivers, such as the Mississippi, the Susquehanna, the Hudson, the Columbia and the Sacramento, the coastal zone need extend upstream only to the point of identified average salt water intrusion, although States may delineate boundaries above this point if they can demonstrate that uses can or do occur that have direct and significant impacts on coastal waters and, therefore, require management as part of a State's program.

(2) Waters under saline influence—Waters containing a significant quantity of seawater as defined by and uniformly applied by the State, must be included in the coastal boundaries. Areas of tidal influence that extend further inland, particularly in estuaries, deltas and rivers, may be included if uses further inland could have direct and significant impacts on coastal waters.

(3) Indian lands not held in trust by the Federal Government. Because such lands often are interspersed with trust lands (which must be excluded from the management area), it may be difficult to develop a discrete management program for non-trust lands alone. Moreover, in some cases, because of longstanding jurisdictional disputes, it often may be difficult to determine which lands are trust lands and which are non-trust lands. Accordingly, States have the option of including or excluding non-trust lands from the management program. (See § 923.33(e) regarding tribal participation in coastal management.)

(c) *Comment.* Urban areas. In many urban areas or where the shoreline has been modified extensively, natural system relationships between land and water may be extremely difficult, if not impossible, to define in terms of "direct and significant impacts." Two impacts that States should consider as causing direct and significant impacts in urban areas are those resulting from sewage discharges and urban runoff into coastal waters. In addition, States should consider dependency of uses on water access, or visual relationships as factors appropriate for the determination of the inland urban boundary. While inland boundaries in urban areas may be more limited than in more natural, less developed portions of a State's coastal zone, how much more limited this boundary may be will depend on the extent of development or alteration, the nature of coastal-related issues of significance in urban areas, and the number, nature and location of water dependent or water-impacting uses in close proximity to the water.

(d) *Comment.* Direct and significant impacts.

(1) The purpose of determining "direct and significant impacts" on coastal waters is to assist in a determination of uses subject to the management program and thereby included within the management boundaries.

(2) Certain uses may cause direct and significant impacts only in terms of water or air quality impacts. However, once such uses have been identified, their management should be based on the comprehensive policies of the program which will address more than just air and water quality considerations.

(3) While the substantive definition of direct and significant impact is a matter for each State to establish, the Associate Administrator will review this definition in terms of the method used to analyze various land and water uses and their impacts on coastal waters.

(e) *Requirement.* The inland boundary must be described in a manner which is sufficiently clear and exact to enable persons to determine whether property they use or an activity they propose to undertake is or is not located in the area subject to management. Whether this description should be in narrative form or graphically depicted in the management program document depends on (i) the nature of the boundary and (ii) whether it is possible to determine if a use or an area is within the coastal zone within a reasonable period of time. "Reasonable period of time" means that States must be able to advise interested parties whether they are subject to the terms of the management program within, at a maximum, 30 days of receipt of an inquiry. States should endeavor to respond to inquiries within a shorter time period in order not to cause unnecessary uncertainty for affected parties.

(f) *Comment.* The primary purpose in defining the coastal zone boundary is to assist coastal residents and property owners, resource users and governmental entities to understand the geographic scope of the management program and to assist them in determining whether, where and how they are affected by the program. Accordingly, it is anticipated that the program submission should contain maps, charts or other graphics appropriate to understanding the provisions and geographic scope of the management program.

(g) *Comment.* An inland coastal zone boundary defined in terms of political jurisdiction (e.g., county, township or municipal lines) cultural features (e.g., highways, railroads), planning areas (e.g., regional agency jurisdictions, census enumeration districts), or a uniform setback line is acceptable provided that such boundary includes the beaches, wetlands, islands, transitional and intertidal areas cited in paragraphs (a)(3)–(6) above plus those uses identified pursuant to section 923.11 and those areas identified pursuant to section 923.21.

§ 923.32 Seaward boundaries.

(a) *Requirement.* The seaward boundary is clearly defined in the Act. For States adjoining the Great Lakes, the seaward boundary is the international boundary with Canada or the boundaries with adjacent States. For all other States participating in the program, the seaward boundary is the three mile outer limit of the United States territorial sea. The requirement can be met by a simple restatement of the limits defined in this section.

(b) *Comment.* The seaward limits as defined in this section are for purposes of this program only and represent the area within which the State's management program may be authorized and financed. These limits are irrespective of any other claims States may have by virtue of the Submerged Lands Act or any changes that may occur as a result of the Fisheries Conservation and Management Act of 1976.

(c) *Comment.* The seaward limits need not be defined in any more precise manner than that stated above provided that there are no water areas which immediately require a more exact delineation because of site specific policies associated with these areas. Examples of what would constitute critical areas that would require more precise delineation include, but are not limited to, those areas where a State specifically encourages or conditions construction of a monobuoy; designates marine sanctuaries, protected resource habitats or preserves; reserves corridors for pipelines; or reserves areas for siting of off-shore islands or other structures.

(d) *Comment.* Lateral seaward boundaries. States shall use the same lateral seaward boundaries to the limit of the United States territorial sea used in the extension of such boundaries for purposes of the Coastal Energy Impact Program (CEIP) pursuant to Subpart H of 15 CFR 931.80 et seq. The lateral boundaries need not be mapped unless there are water areas along these boundaries which require delineation because of site specific policies associated with these areas. In the event no agreement exists regarding the State's lateral seaward boundary at the time of program submission, States should indicate the status of lateral seaward boundary negotiations pursuant to 15 CFR 931.82.

§ 923.33 Excluded lands.

(a) *Requirement.* States must exclude from their coastal management zone those lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents. To meet this requirement, States must describe or map lands or types of lands owned, leased, held in trust or otherwise used solely by Federal agencies. The intent of this requirement is not to list or map every military base which is physically located in, but legally excluded from, a State's coastal zone but rather to indicate the large-scale holdings and types of lands excluded. Accordingly, a State may simply declare that, for example, all Department of Defense lands in counties x, y and z are excluded.

(b) *Comment.* Where Federal agencies have provided information regarding the location of excluded lands, these should be listed, usually as an appendix or attachment to the management program. It will not always be necessary or appropriate to list these lands in the format or detail provided by the Federal agencies. If Federal agencies have not provided sufficient information or detail regarding lands that should be excluded, States may rely on such other information as they may be able to obtain.

(c) *Comment.* The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that significantly affect coastal zone areas, uses or resources within the purview of a State's management program. Therefore, States should consider mapping the following types of excluded Federal lands: (i) Large-scale holdings (of 100 or more acres), especially those that may have spillover effects; (ii) lands near special management areas; and (iii) lands that may be declared surplus or excess in the near future, especially those for which the State has reuse priorities or policies.

(d) *Comment.* In excluding Federal lands from a State's coastal zone for the purposes of this Act, a State does not impair in any way any rights or authorities that it may have over Federal lands that exist separate from this program.

(e) *Comment.* Indian lands. While Indian lands held in trust by the Federal government must be excluded from a State's coastal zone, by definition in the Act, and while alienated (or nontrust) lands may be excluded from a State's program, it is not intended that such exclusions should deter tribes along coastal shorelines from developing and administering sound coastal management practices. Wise use and management of tribal land and water resources would complement State management efforts and would further the national objectives of the Act. Accordingly, tribal participation in coastal management efforts shall be supported and encouraged provided that such efforts are compatible with a State's coastal management policies and are in furtherance of the national policies of section 303 of the Act. (For further guidance on tribal participation in coastal management activities, see § 923.93(e).)

§ 923.34 Interstate boundaries.

While it is not required that inland coastal management boundaries of contiguous States be coterminous, States must indicate that there has been consultation with adjoining coastal States during the program development process to manage a common resource compatibly or to minimize the possibility of incompatible uses occurring at the juncture of each State's boundary.

Subpart E—Authorities and Organization

§ 923.40 General.

(a) The authorities and organizational structure on which a State will rely to administer its management program are the crucial underpinnings for enforcing the policies which guide the management of the uses and areas identified according to the previous subparts. There is a direct relationship between the adequacy of authorities and the adequacy of the overall program. The authorities need to be broad enough in both geographic scope and subject matter to ensure implementation of the State's enforceable policies. These enforceable policies must be sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses in order to assure wise use of the coastal zone. (Issues relating to the adequate scope of the program are dealt with in § 923.3.)

(b) The entity or entities which will exercise the program's authorities required above is a matter of State determination. They may be the State agency designated pursuant to section 306(c)(5) of the Act, other State agencies, regional or interstate bodies, and local governments. The major approval criterion is a determination that such entity or entities are required to exercise their authorities in conformance with the policies of the management program. Accordingly, the essential requirement is that the State demonstrate that there is a means of ensuring such compliance. This demonstration will be in the context of one or a combination of the three control techniques specified in section 306(e)(1) of the Act and as further described in section 923.42 below.

(c) In determining the adequacy of the authorities and organization of a State's program, the Assistant Administrator will review and evaluate authorities and organizational arrangements in light of the requirements of this subpart and the finding of section 302(g) of the Act, which provides:

> In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present State and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(c) The authorities requirements of the Act dealt with in this subpart are those contained in subsections 305(b)(4)—Means of Control; 306(c)(7)—Authorities; 306(d)(1)—Control Development and Resolve Conflicts; 306(d)(2)—Powers of Acquisition; 306(e)(1)—Techniques of Control; 306(e)(2)—Uses of Regional Benefit; and 307(f)—Air and Water Quality Control Requirements. The organizational requirements of the Act dealt with in this subpart are those contained in subsections 305(b)(6)—Organizational Structure; 306(c)(5)—Designated State Agency; and 306(c)(6)—Organization.

§ 923.41 Identification of authorities.

(a) *Requirement.* In order to meet the requirements of subsection 305(b)(4) of the Act, States must identify relevant constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and interagency agreements) that will be used to carry out the State's management program. This identification will include the authorities required pursuant to sections 306(d) and 306(e) of the Act.

(b) *Comment.* Statutory Citation, Subsection 305(b)(4):

> The management program for each coastal state shall include * * * (4) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (2), including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions.

(1) A clear identification of the authorities relied upon to implement the management program is necessary for the Assistant Administrator to determine the legal adequacy of the program. When, in the opinion of the Assistant Administrator, there is serious question as to the enforceability of any of the authorities asserted to be part of the management program, the Associate Administrator may request the designated State agency (for program development purposes) to seek an opinion from the State's Attorney General.

(2) Another purpose of this listing is to assure that there is a clear identification of laws and other authorities which expressly are a part of the management program and to which the Federal consistency provisions of the Act will be applied.

(c) *Requirement.* Irrespective of the control technique chosen pursuant to subsection 306(e)(1) of the Act, States must have adopted at the time of program approval the legal authorities called for in section 306(d) in order to assure that management of coastal land and water uses will be in accordance with the policies of the management program. These authorities must include the ability to:

(1) Administer land and water use regulations in conformance with the policies of the management program;

(2) Control such development as is necessary to ensure compliance with the management program;

(3) Resolve conflicts among competing uses;

(4) Acquire appropriate interests in lands, waters or other property as necessary to achieve management objectives. Where acquisition will be a necessary technique for accomplishing particular management program policies and objectives, the management program must indicate for what purpose acquisition will be used (i.e., what policies or objectives will be accomplished); the type of acquisition (e.g., fee simple, purchase of easements, condemnation); and what agency (or agencies) of government have the authority for the specified type of acquisition.

(d) *Comment.* Statutory Citation, Subsection 306(c)(7):

> Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * (7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

(e) *Comment.* Statutory Citation, Subsection 306(d):

> Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone, in accordance with the management program. Such authority shall include power:
>
> (1) To administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and
>
> (2) To acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(f) *Comment.* Examples of acceptable conflict resolution mechanisms, as referred to in (c)(3) above, include, but are not limited to, mediation procedures, administrative review, gubernatorial action, or judicial appeal provisions provided that any such mechanism results in a decision which is binding upon the entities involved. Since the policies, standards and criteria of the management program will form the basis for conflict resolution, it will be important that these be clearly and specifically stated. This will be particularly true when the primary means of resolving conflicts is to be judicial review or appeal.

(g) *Comment.* Where the acquisition technique, referred to in (c)(4) above, will be a significant element of a State's management program, the State may be required to submit a specific acquisition plan with evidence of the availability of adequate funding for those acquisitions a commitment to carry out the acquisition plan.

(h) *Comment.* Given the provisions of section 315(2) of the Act authorizing acquisition funds for shorefront access and for preservation of islands. States should indicate in their man-

agement program the acquisition authorities available for these two purposes. Such a list also will help to meet the requirements of § 923.25(a)(5) for identifying legal authorities and management techniques that can be used to meet shorefront access or island preservation needs.

§ 923.42 Control techniques.

(a) *Requirement.* A State must choose to implement and enforce its program through any one or a combination of the techniques provided for under section 306(e)(1) of the Act. The differences among the techniques raise different issues that States must resolve. These issues are discussed in the *Comments* below.

(b) *Comment.* Statutory Citation, Subsection 306(e)(1):

Prior to granting approval, the Secretary shall also find that the program provides:

(1) For any one or a combination of the following general techniques for control of land and water uses within the coastal zone:

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(B) Direct state land and water use planning and regulation, or

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(c) *Comment.* Local implementation—Technique A

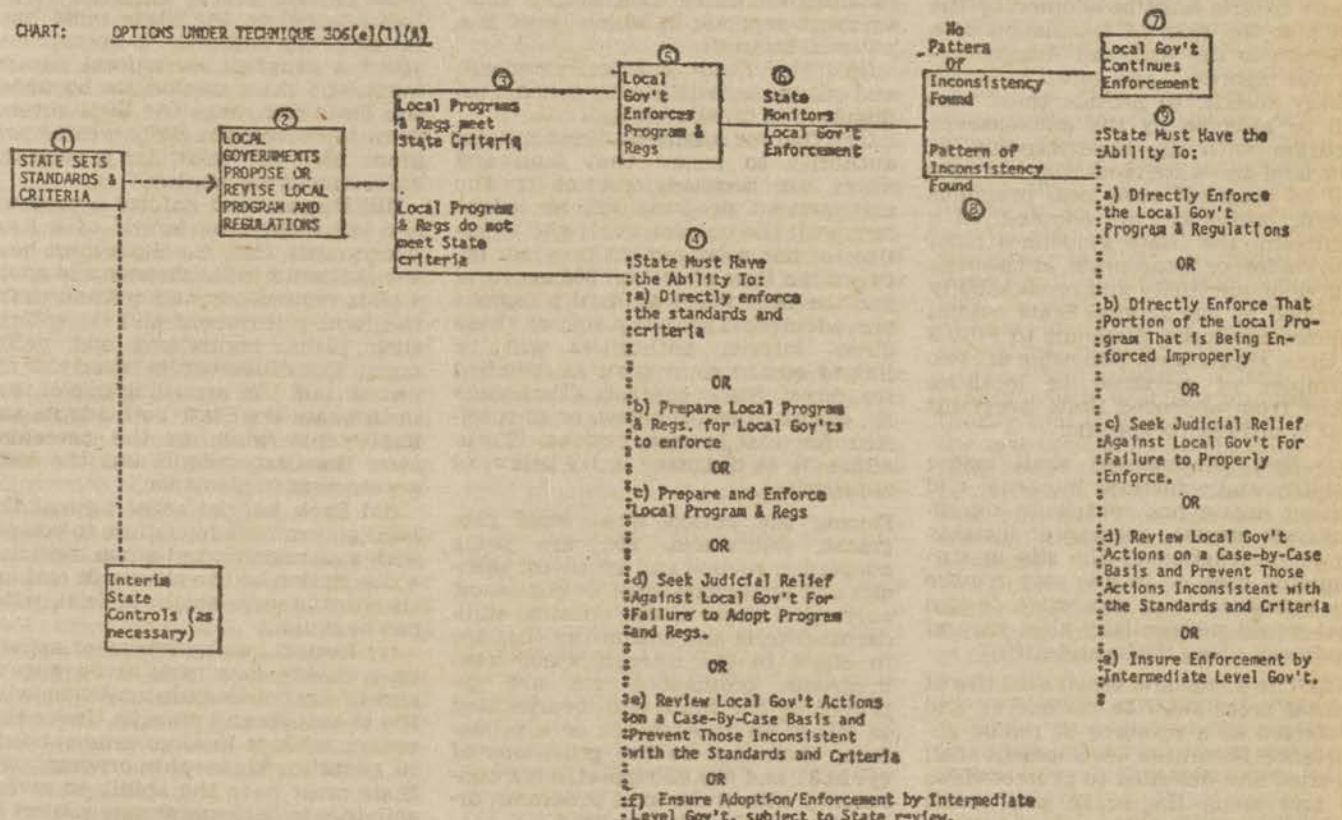
(1) Control technique 306(e)(1)(A) of the Act allows for State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance. The critical issues related to this technique are:

(i) The degree of specificity required in the State criteria and standards,

(ii) The extent to which local programs, ordinances or regulations must be in place prior to approval of the State's management program, and

(iii) The means for State administrative review and enforcement of compliance.

The chart and discussions below are meant to guide State responses to these issues and to indicate the type and degree of latitude OCZM will find acceptable.



(2) *Specificity of standards.* Under Technique A the State establishes policies, standards and criteria regarding management of particular coastal resources, uses and areas for local governments to implement. (Item 1 on chart.) The policies of the program may serve as the criteria and standards for local implementation, providing these policies meet the requirements of section 923.3 for specificity. Local implementation can consist of development or revision of local programs, laws, ordinances or regulations provided that these are based on the State policies, standards and criteria and are enforceable. The State policies, criteria and standards must be adopted as part of the coastal management program, either pursuant to legislation or binding executive action. These criteria must be adopted by the State at the time of submission of a program to the Assistant Administrator for approval and must be sufficiently specific to provide those who will be affected by the management program with an understanding of how land and water activities and uses will be managed once local programs and/or ordinances are adopted. At a minimum, the State guidelines must provide for, or incorporate, at least the degree of specificity and predictability provided by the general State coastal policies developed pursuant to § 923.3 of these regulations. Following are two examples of guidance to localities taken from approved State programs that is sufficiently specific:

(i) New development shall assure stability and structural integrity, and neither create not contribute significantly to erosion, geographic instability or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

(ii) The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

(3) States using Technique A may seek section 306 approval after all requisite local ordinances or programs have been reviewed and approved. In such cases, only items 5-9 of the chart apply.

(4) *Direct interim controls.* Alternatively, States may seek program approval prior to final approval of all local ordinances and programs provided that:

(i) A reasonable time and procedure for local compliance has been established (what constitutes a reasonable time period shall be agreed to by the State and the Assistant Administrator);

(ii) Procedures for approval of local programs by the State agency include provisions for:

(A) Opportunity for the public and governmental entities (including Federal agencies) to participate in the development of local programs; and

(B) Opportunity for the public and governmental entities (including Federal agencies) to make their views known (through public hearings or other means) to the State agency prior to approval of local programs; and

(C) Review by the State of the adequcy of local program consideration of facilities identified in a State's management program in which there is a national interest.

(iii) The State policies, standards and criteria are sufficiently specific (as discussed in (2) above); and

(iv) There is sufficient direct interim authority to insure that land and water use decisions subject to the management program will be consistent with the policies, goals and objectives of the management program between the time of section 306 approval and the time when all local programs are adopted. The adequacy of these direct interim authorities will be judged on the same basis as specified for direct State controls (Technique B), discussed in (d) below, or as specified for case-by-case reviews (Technique C), as discussed in (e) below, as appropriate.

During the period while local programs, ordinances, etc. are being adopted or revised and approved, agencies and applicants must be consistent only with those State policies, standards, criteria and authorities that are in effect in the interim. Once local programs, ordinances, etc. are approved by the State and incorporated as either an amendment or a refinement (pursuant to the provisions of §§ 923.81 and 923.82 respectively), consistency with those local programs, ordinances, etc. will be required.

(5) *Review/Approval Process.* Once State policies, standards and criteria have been adopted, local governments propose plans, programs and/or regulations to implement the policies and standards. (Item 2 on chart.) This may include the preparation of new comprehensive plans, zoning ordinances, by-laws, subdivision regulations, special purpose regulations (as for example, sand dune protection ordinances), or the revision of existing plans, ordinances, or regulations. The State entity empowered by legislative or executive mandate to review local programs (which may include plans, laws, ordinances and/or regulations) must determine if the programs meet the requirements of the State policies, standards and criteria. (Item 3 on chart.) If the localities do not develop programs consistent with the policies, standards and criteria, the State must have the authority to take action to assure that the management program is implemented, either by the State or by the local government. (Item 4 on chart.) To insure implementation, the State must have the ability to do at least one of the following:

(i) Directly enforce the State standards and criteria. To use this alternative, a State would need enough State authorities to be able to control directly land and water uses which have a direct and significant impact upon the coastal waters;

(ii) Prepare a local program for the local government to enforce. To use this alternative the State must have (a) statutory authority to prepare and adopt a program for a local government, and (b) a mechanism by which the State can cause the local government to enforce the State-created program. (See (iv) below for a potential enforcement mechanism);

(iii) Prepare and enforce a program and regulations on behalf of a local government. Here the State must have the authority to (a) prepare and adopt a plan, regulations, and ordinances for the local government and (b) enforce such plans, regulations and ordinances. The distinction between this approach and the preceding one is that in this case the State both adopts and implements while in the preceding case, the State adopts but the local government implements;

(iv) Seek judicial relief against the local government for failure to comply with a management program including a description of the standards and authorities under which judicial relief can be sought.

(v) Review local government actions on a case-by-case basis or on appeal, and prevent actions inconsistent with the standards and criteria. Under this option, when a local government fails to adopt an approvable program, the State must have the ability to review activities in the coastal zone subject to the management program and the power to prohibit, modify or condition those activities based on the policies, standards and criteria of the management program; or

(vi) If a locality fails to adopt a management program, the State could devise a procedure whereby the responsibility for preparing a program shifts to an intermediate level government, such as a county. If this intermediate level of government fails to produce a program, then the State must have the ability to take one of the actions described above. This alternative cannot be used where the intermediate level of government lacks

the legal authority to adopt and implement regulations necessary to implement State policies, standards and criteria.

(6) *Enforcement.* Once a local program is approved, implementation and enforcement begin. (Item 5 on chart.) To ensure that local actions continue to comply with the State management policies, the State must establish a monitoring system. (Item 6 on chart.) The State agency designated pursuant to subsection 306(c)(5) of the Act will be responsible for establishing a monitoring system capable of detecting paterns of noncompliance except that in the case of facilities in which there is a national interest or uses of regional benefit recognized in a State's management program, the monitoring system must be capable of detecting single instances of local actions affecting such facilities or uses in a manner contrary to the management program. Given the substantive differences that can be expected in State programs with respect to what constitutes compliance with State policies, it will be up to each State to develop and appropriate monitoring system. The monitoring system and the determination of what constitutes a pattern of noncompliance should take into account such considerations as the number of activities improperly managed, the size and type of such activities, their proximity to coastal waters and to special management areas, whether they constitute uses of regional benefit and whether they affect facilities in which there is a national interest. A description of the monitoring system and a discussion of what will constitute patterns of noncompliance shall be included in the program submission. Following are some monitoring techniques States may want to use, either singly or in combination. The list is not exhaustive and does not limit States to only these techniques:

(i) Periodic reports—monthly reports submitted by each local government listing all building permits issued, variances and exceptions granted, subdivision plats approved, etc. during the preceding month,

(ii) Spot checks by State Agency,

(iii) Procedures for submission of citizen complaints followed by State review of complaint,

(iv) Establishment of citizen "overview" committees, or

(v) Selective review of local decisions.

(7) If no pattern of noncompliance is found, local governments continue implementation of local authorities and the State's role is confined to continued monitoring. (Item 7 on chart.) If, however, monitoring reveals a pattern of noncompliance, the State must be able to insure that its standards and criteria are adhered to. (Item 8 on chart.) The State must be capable of assuring compliance when a pattern of deviation is detected or when a facility involving identified national interests or uses of regional benefit is affected in a manner contrary to the program's policies. (Item 9 on chart.) When State action is required because of failure by a local government to enforce its program, the State has the following options available to enforce compliance:

(i) Directly enforce the entire local program;

(ii) Directly enforce that portion of the local program that is being enforced improperly. State intervention here would be necessary only in those local government activities that are violating the policies, standards or criteria. For example, if a subdivision regulation were the only part of a program that was being enforced improperly, State enforcement could be limited to that regulation. In such a case, the State would need to have the statutory authority to ensure compliance of subdivision applications;

(iii) Seek judicial relief against local government for failure to properly enforce;

(iv) Review local government actions on a case-by-case basis or on appeal and the power to prevent those actions inconsistent with the policies and standards. The same authorities as those noted in connection with § 923.42(c)(5)(v) above would be necessary; or

(v) Provide a procedure whereby the responsibility for enforcing a program shifts to an intermediate level of government, assuming statutory authority exists to enable the immediate level of government to assume this responsibility.

(d) *Comment.* Direct state control—Technique B.

(1) Under Technique B, a State may control land and water uses subject to the management program on the basis of direct State Authority. This authority may be derived from a single, comprehensive piece of legislation specific to coastal management and the requirements of this Act or on the basis of several different, often pre-existing, State authorities which are compatible with and applied on the basis of the coastal management policies developed pursuant to § 923.3. This latter approach has been referred to informally as networking.

(2) *Comprehensive legislation.* While it is possible that a State will be able to put together into a single piece of legislation all the authorities needed to meet the requirements of this subpart, it is more likely that even a single, major piece of coastal legislation will be supplemented with other State authorities to meet all the legal requirements. Where this will be the case, States are advised to review the commentary on networking that follows. Also, in cases where a State will be relying primarily—but not exclusively—on a single piece of legislation, it is important to be explicit about those other authorities included in the management program as part of the listing called for in § 923.41.

(3) *Networking.* The critical issues related to networking are:

(i) The extent to which existing, special purpose laws adequately reflect and will be operated in conformity with the State's comprehensive management policies;

(ii) The extent to which and when rules and regulations of networked authorities need to be altered; and

(iii) The extent to which executive orders intradepartmental or interagency agreements, memoranda of understanding or agreement are binding and enforceable. Even though each agency is statutorily mandated to carry out its own, often more narrowly focused policies, the effect of networking is to tie the implementation of these individual authorities into a comprehensive framework that addresses more than the individual responsibilities of each agency and that makes these authorities part of an overall, unified strategy for managing coastal land and water resources. In applying existing authorities, the State must determine that they can be used to implement the full range of policies identified as necessary for coastal management purposes.

(4) *Enforceability.* Each State agency which exercises statutory authority that is to be incorporated into the management program must be legally bound to exercise its authority in conformance with the State's enforceable policies. This can be achieved through an executive order or an interagency agreement (including memoranda of understanding or agreement) provided that such order or agreement binds the affected parties to conformance with relevant management program policies. In States where affected agency heads report directly to the Governor and where the Governor has a legal policy making responsibility, an executive order will be an acceptable instrument to assure the coordination of networked activities.

(5) Interagency agreements (such as memoranda of understanding or agreement) must be binding and enforceable in order to constitute acceptable legal authorities. Interagency agreements will be considered enforceable if the management program and State authorities in support of the program provide grounds for bringing an action to ensure compliance of networked agencies with the program. It will be sufficient if any of the following can bring suit: The State agency designated pursuant to subsection 306(c)(5) of the Act, the State's Attorney General, another State agency, a local government, or a citizen.

(6) It is anticipated that executive orders and interagency agreements will focus on either or both of the following:

(i) Tie in of an enforcement mechanism; as for example, tying in an existing enforcement mechanism of an agency to serve as the basic compliance mechanism for coastal management purposes, or, more likely;

(ii) Establishment of conformance requirements of other State agency activities or authorities to management program policies. In order for interagency agreements to be considered binding, States should include the following:

(A) A description of how the networked agency, in implementing or enforcing its particular authorities, will operate those authorities in conformance with the management program's policies;

(B) A discussion of procedures to be followed to resolve conflicts between agency activities and management program policies or conflicts between agencies regarding what constitutes conformance with the policies:

(7) If networked State agencies can enforce the management program policies at the time of section 306 approval without first having to revise their operating rules and regulations, then any proposed revisions to such rules and regulations which would enhance or facilitate implementation need not be accomplished prior to program approval. However, where State agencies cannot enforce coastal policies without first revising their rules and regulations, then these revisions must be made prior to program approval. An example clarifying the distinction between these two statements follows: Assume State X has established as a management program policy that only specified types of development henceforth will be permitted on barrier islands. Assume further that such a policy statement is contained in State legislation that proclaims such policy to be effective immediately and directs all State agencies to revise their existing operating procedures (including rules and regulations) within a certain time period to conform with the policy. In this case, the policy is enforceable at time of management program approval and the revision of associated rules and regulations could occur after program approval. Now, however, assume the same policy is part of the management program but the corresponding State legislation states the policy becomes effective when State regulations have been revised to reflect this policy mandate. In this example, rule revision would be necessary prior to program approval.

(e) *Comment.* Case-by-case reviews—Technique C.

(1) Under Technique C States review individual development plans, projects, or land and water use regulations (including variances and exceptions thereto) proposed by any State or local authority or private developer which have been defined in the management program as subject to review for consistency with the management program. The State must have the power to approve or disapprove such actions or the power to seek court review. The State must provide public notice of the action and must provide opportunity for a public hearing prior to rendering a decision. Under this technique the critical issues that must be addressed are:

(i) The basis on which the designated State agency will decide to review particular plans or projects;

(ii) The criteria by which plans and projects will be approved or disapproved; and

(iii) The procedures under which the case-by-case reviews will be conducted.

(2) This technique requires the greatest degree of policy specificity because compliance with the program will not require any prior actions on the part of anyone affected by the program. Specificity also is needed to avoid challenges that decisions (made pursuant to the management program) are unfounded, arbitrary or capricious.

(3) The State must identify the plans, projects or regulations it will review, based on the significance of these plans in terms of impacts on coastal resources, potential for incompatibility with the State's coastal management policies, and greater than local significance.

(4) *Procedures.* Certain minimal procedural requirements are dictated by the language of section 306(e)(1)(C) of the Act. These are that:

(i) Prior to approving or disapproving the consistency of a development plan or project with the management program, public notice be provided. Such public notice should be provided in those communities most likely to be affected by the proposal. Further, such public notice should provide information on the nature of the proposal (such as size, location, type, etc.), where further information is available, and notice of hearing dates, if any;

(ii) There be the opportunity for hearings. Hearings may be defined as public hearings or such other hearings format as may be permitted under a State's administrative procedure act or pursuant to an agency's administrative or operating regulations, or provisions for providing written comments.

§ 923.43 Authorities related to uses of regional benefit.

(a) *Requirement.* In addition to the requirement of § 923.13 to determine what constitute uses of regional benefit, States must provide for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit. In order to meet the requirements of this section, States must identify those techniques, including legal authorities, that will be used to assure that unreasonable restrictions or exclusions by local land and water use regulations shall not be sustained.

(b) *Comment.* Statutory Citation, Subsection 306(e)(2):

> Prior to granting approval, the Secretary shall also find that the program provides: * * * (2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

(c) *Comment.* Following are some examples of acceptable techniques that may be used to assure that local regulations do not unreasonably restrict or exclude uses of regional benefit. These examples are not exclusive, but rather are illustrative of approaches that will meet the requirements of this section:

(1) Statewide siting laws that supercede local regulations when necessary;

(2) Assurance that an adequate amount of specific sites are or can be set aside to meet a projection of reasonable and foreseeable demand for different uses of regional benefit through:

(i) State acquisition programs for sites as the need arises for particular uses of regional benefit;

(ii) Provision of sites in local maps or ordinances; or

(iii) State guidelines defining uses of regional benefit and requiring their consideration as local implementation programs are developed.

If a state follows examples (ii) or (iii), that State must have the ability to assure that if local maps, ordinances or programs are changed, such changes will not result in an insufficient number of sites throughout the coastal zone to meet projected demands;

(3) Definition of what constitutes unreasonable restrictions or exclusions and establishment of an administrative or judicial mechanism to deal with such restrictions or exclusions as they occur. Under this approach, the two essential elements are:

(i) A specific definition of what constitutes an unreasonable restriction or exclusion in order to provide the basis for an appeal or other action to the administrative or judicial mechanism. States may wish to define "an unreasonable restriction or exclusion" along similar lines to what would constitute "arbitrary or capricious" zoning action in order to provide the same grounds for action;

(ii) Provision of standing to some party—either a State agency, a local government, a landowner, or an ag-

grieved party—to challenge an allegedly unreasonable restriction or exclusions.

§ 923.44 Air and water pollution control requirements.

(a) *Requirement.* In order to fulfill the requirements of section 307(f) of the Act, States must incorporate into their programs requirements established pursuant to the Federal Water Pollution Control Act (FWPCA) as amended, and the Clean Air Act (CAA) as amended. Requirements are any enforceable standards established pursuant to either Act as defined by the General Counsel of the Environmental Protection Agency (EPA).

(b) *Comment.* Statutory Citation, Subsection 307(f):

Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Act as amended, or the Clean Air Act as amended, or (2) established by the Federal Government or any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

(c) *Comment.* Incorporation. (1) With respect to the document submitted for approval, it is sufficient that the program state that the requirements of the FWPCA and CAA are the minimum water and air pollution control requirements applicable to the management program and are incorporated by reference. Incorporation of the air and water quality requirements should involve their consideration during program development, especially with respect to use determinations and designation of areas for special management. In addition, this incorporation will prove to be more meaningful if close coordination and working relationships between the State coastal planning or management agency and the air and water quality agencies are developed and maintained throughout the program development process and after program approval.

(2) Following is a table of the most important Clean Air Act requirements. These requirements are categorized as either uniform, nationwide requirements or non-uniform requirements applicable to a specific State or local area. The first category of requirements is established in the Clean Air Act or by the EPA, pursuant to provisions of the CAA, and applies uniformly in all areas of the country. The second category of requirements is based on the nature of air quality problems that exist or are forecast in coastal areas, in locations where emission sources may affect air quality in coastal areas, and in other areas of a State. The majority of the second category of requirements will be included in the State Implementation Plans (SIPs) required by the Clean Air Act.

TABLE.—*Clean Air Act requirements*

Uniform, nationwide requirements	*Nonuniform requirements (SIP's)*
National ambient air quality standards.	New source review.
Motor vehicle emission standards (except where States have been granted a waiver by EPA).	Emissions or air quality standards more stringent than Federal standards.
New source performance standards.	Prevention of significant deterioration.
National emissions standards for hazardous air pollutants.	Attainment and maintenance of national ambient air quality standards
	Other attainment or maintenance measures such as transportation control measures.

(3) Water quality standards are established by promulgation or EPA approval of State standards, taking into consideration public water supplies, protection and propagation of fish, shellfish and wildlife, recreation, agriculture, industry and navigation. EPA itself develops standards on effluent limitations, new source performance standards, pre-treatment standards and toxic pollutant discharge standards.

(4) If more stringent standards are developed by a State pursuant to the CAA or FWPCA, and where such standards can be enforced under State authorities, they must be incorporated into the State's management program.

(i) In such cases, if incorporation of these more stringent standards leads to the restriction or exclusion of some facilities in which there is a national interest in their siting, such exclusion or restriction is established pursuant to the requirements of the Clean Air Act and Federal Water Pollution Control Act in which there is also a national interest.

(ii) Where more stringent requirements are incorporated, these should be explicitly referenced as such in the management program. Whether or not the additional requirements per se must be included in the body of the management program document, as an appendix, or as a separate reference will depend on the nature and detail of these requirements. States should consult with OCZM on this matter.

§ 923.45 Organizational structure.

(a) *Requirement.* In order to fulfill the requirements of subsections 305(b)(6) and 306(c)(6) of the Act, States must describe the organizational structure that will be used to implement and administer the management program. This description must include a discussion of those State and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(c)(2)(B); 306(c)(7); 306(d) (1) and (2); 306(e) (1) and (2) and 307(f). Further, the State must describe the relationship of these administering agencies to the State agency designated pursuant to subsection 306(c)(5) of the Act.

(b) *Comment.* Statutory Citation, Subsection 305(b)(6):

The management program for each coastal state shall include * * * (6) A description of the organizational structure proposed to implement such management program including the responsibilities and interrelationships of local, areawide, state, regional and interstate agencies in the management process.

(c) *Comment.* Statutory Citation, Subsection 306(c)(6):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * (6) the state is organized to implement the management program required under paragraph (1) of this subsection.

(1) The main purpose of this requirement is to provide a clear understanding of the entities that have responsibility for administering various aspects of the management program and the interrelationship of these entities.

§ 923.46 Designated State agency.

(a) *Requirement.* In order to fulfill the requirement of subsection 306(c)(5) of the Act, the Governor must designate a single State agency to receive and administer section 306 grants. This State agency shall be fiscally and programmatically responsible for the grants and further must have the following capabilities:

(1) The fiscal and legal capability to accept and administer grant funds, to make contracts or similar arrangements (such as passthrough grants) with participating agencies for the purpose of carrying out specific management tasks and to account for the expenditure of implementation funds by any recipient of such monies.

(2) The administrative capability to monitor and evaluate the management of the State's coastal resources by the various agencies and/or local governments with specified responsibilities under the management program (irrespective of whether such entities receive section 306 funds); to make periodic reports to OCZM, the Governor, or the State legislature, as appropriate, regarding the performance of all agencies involved in the program. The agency must be capable of presenting evidence of adherence to the management program or justification for deviation from the program as part of the review of State performance required by section 312 of the Act; and

(3) The ability to request approval from the Assistant Administrator for amendments or refinements to the management program, if and when appropriate.

(b) *Comment.* Statutory Citation, Subsection 306(c)(5):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * (5) The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this section.

(c) *Comment.* The last two requirements in (a) above should be read in close conjunction with those of Subpart J—Review of Approved Management Programs, which reals with review of performance after approval, amendments, or refinements to management programs, and termination and withdrawal of funding.

(d) *Comment.* The 306 agency designation is designed to establish a single point of accountability for prudent use of administrative funds in the furtherance of the management program and for monitoring of management activities. Designation does not imply that this single agency need be a "super agency" or the principal implementation vehicle. It is, however, the focal point for proper administration and evaluation of the State's program and the entity to which OCZM will look when monitoring and reevaluating a State's program during program implementation.

(e) *Comment.* The requirements for the single designated agency contained herein need not be viewed as confining or otherwise limiting the role and responsibilities which may be assigned to this agency. It is up to the State to decide in what manner and to what extent the designated State agency will be involved in actual program implementation or enforcement. In determining the extent to which this agency should be involved in program implementation or enforcement, specific factors should be considered, such as the manner in which local, municipal and regional authorities are involved in program implementation, the administrative structure of the State, the authorities to be relied upon and the agencies administering such authorities. Because the designated State agency may be viewed as the best vehicle for increasing the unity and efficiency of a management program, the State may want to consider the following in arriving at a designation.

(1) Whether the designated State entity has a legislative mandate to coordinate other State or local programs, plans and/or policies within the coastal zone;

(2) To what extent linkages already exist between the entity, other agencies, and local governments;

(3) To what extent management or regulatory authorities affecting the coastal zone presently are administered by the agency; and

(4) Whether the agency is equipped to handle monitoring, evaluation and enforcement responsibilities.

§ 923.47 Documentation.

(a) *Requirement.* In order to fulfill the requirements of subsections 306(c)(4), (5), (6) and (7), documentation is required to the effect that the Governor:

(1) Has reviewed and approved as State policy the management program, and any changes thereto, submitted for the approval of the Assistant Administrator;

(2) Has designated a single State agency to receive and administer implementation grants;

(3) Attests to the fact that the State has the authorities necessary to implement the management program; and

(4) Attests to the fact that the State is organized to implement the management program.

This documentation may be contained in the transmittal signed by the Governor which accompanies the management program submission.

(b) *Comment.* This requirement for a statement of endorsement by the Governor is intended to make clear that the management program is an enforceable instrument of State policy and to assure gubernatorial commitment in carrying out the program.

Subpart F—Coordination, Public Involvement and National Interests

§ 923.50 General.

(a) Coordination with governmental agencies having interests and responsibilities affecting the coastal zone, and involvement of interest groups as well as the general public are essential elements in the development and administration of a coastal management program. The coordination requirements of this subpart are intended to lead to substantive inputs into the management program. Evaluation and incorporation of these inputs is necessary to achieve a proper balancing of diverse interests. The policies of section 303 of the Act require that a balancing of varying, sometimes conflicting, interests be achieved, including:

(1) The preservation, protection, development and, where possible, the restoration or enhancement of coastal resources;

(2) The achievement of wise use of coastal land and water resources with full consideration having been given ecological, cultural, historic, and esthetic values and needs for economic development; and

(3) The involvement of the public, of Federal, State and local governments and of regional agencies in the development and implementation of coastal management programs.

(b) *Comment.* Statutory Citation, Section 303:

The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and, where possible, to restore or enhance the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

(c) Coordination with and participation by various units and levels of government, interest groups and the general public shall begin early in the program development process and shall occur continuously throughout the process on a timely basis to assure that such efforts will result in substantive inputs into a State's management program. State efforts should be devoted not only to obtaining information necessary for developing the management program but also to obtaining views on what is proposed for implementation and to responding to concerns by interested parties. The requirements for intergovernmental cooperation and public participation continue after program approval. This subpart, therefore, deals with requirements for coordination with governmental and private bodies to assure that their interests are fully articulated and considered during the program development process and that procedures are created to insure continued consideration of their viewpoints during program implementation. In addition, this Subpart deals with mediation procedures for serious disagreements that occur during program development and preliminary approval. Accordingly, this Subpart deals with the following subsections of the Act: 306(c)(1)—Opportunity for Full Participation; 306(c)(2)(A)—Plan Coordination; 306(c)(2)(B)—Continued State-Local Consultation; 306(c)(3)—Public Hearings; 306(c)(8)—Consideration of National Interests; 307(b)—Federal Consultation; and 307(h)—Mediation.

§ 923.51 Federal-State consultation.

(a) *Comment.* The requirements of subsections 306(c)(1) and 307(b) of the Act and those of subsections 307 (c) and (d) establish reciprocal State-Fed-

eral relationships. It is in the context of these relationships that the requirements of this section should be read. In exchange for providing relevant Federal agencies with the opportunity for full participation during program development and for adequately considering the views of such agencies, States can effectuate the Federal consistency provisions of subsections 307 (c) and (d) of the Act (See 15 CFR Part 930).

(b) *Requirement.* In order to meet the requirements of section 306(c)(1) of the Act for the opportunity of full participation by relevant Federal agencies in the development of a State's management program, States must:

(1) Contact the office of each relevant Federal Agency listed in § 923.2(d) and such other Federal agencies as may be relevant, owing to a State's particular circumstances, early in the development of its management program. The purpose of such contact is to develop mutual arrangements or understandings regarding that agency's participation during program development;

(2) Provide for Federal agency input on a timely basis as the program is developed. Such input shall be related both to information required to develop the management program and to evaluation of and recommendations concerning various elements of the management program;

(3) Summarize the nature, frequency, and timing of contacts with relevant Federal agencies, including attempts to resolve differences, if any;

(4) Evaluate Federal comments received during the program development process and, where appropriate in the opinion of the State, accommodate the substance of relevant comments in the management program; and

(5) Indicate the nature of major comments by Federal agencies provided during program development (either by including copies of comments or by summarizing comments) and discuss any major differences or conflicts between the management program proposals and Federal views that have not been accommodated or resolved at the time or program submission.

(c) *Requirement.* With respect to the requirements of (b)(4) above, States must consider and evaluate relevant Federal agency views or comments about the following:

(1) The management of coastal resources for preservation, conservation, development, enhancement or restoration purposes, including statements of national interest policies or claims related thereto;

(2) Statements of national interests in the planning for or siting of facilities which are more than local in nature;

(3) Uses which are subject to the management program;

(4) Areas which are of particular concern to the management program; and

(5) Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(c)(2)(A) of the Act. (See § 923.56 for more detail on this last requirement.)

(d) *Requirement.* In order to fulfill his/her responsibilities under subsection 306(c)(1), the Assistant Administrator shall find that adequate opportunity for full participation by relevant Federal agencies has been provided if a State has:

(1) Contacted relevant Federal agencies;

(2) Provided timely opportunities for relevant Federal agency participation and input; and

(3) Advised these agencies of public hearings on the management program.

(e) *Requirement.* In order to fulfill his/her responsibilities pursuant to subsection 307(b), the Assistant Administrator shall determine whether State consideration of relevant Federal agency views, during program development, has been adequate, based on the nature and reasonableness of a State's evaluation of and response to relevant Federal agency views that relate to substantive requirements of the Act, in particular those relating to boundaries, uses subject to management, areas of particular concern, legal authorities, guidelines on priorities of uses, organization, shorefront planning process, energy facility planning process, the erosion planning process, and national interest considerations.

(f) *Comment.* Statutory Citation, Subsection 306(c)(1):

> Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:
>
> (1) the state has developed and adopted a management program for its coastal zone * * * with the opportunity for full participation by relevant Federal agencies.

(1) Following are some procedures States should use to insure the effectiveness of their consultation efforts. Officially designated regional or field contacts of relevant Federal agencies should be informed early of the management program's overall design and specific applicable issues and should be briefed periodically at important stages in the program development process. Policies, criteria for determining use permissibility, designations or areas of particular concern and other major elements of the management program should be made available for agency review and comment as these elements are developed and considered by the States. Individual consultation, as well as group presentations, should become more substantive and specific as the program moves toward submission. Individual consultations with relevant Federal agencies should be particularly useful as the State establishes its Federal consistency procedures, determines which Federal activities, projects, licenses, permits, and assistance it will want subject to the consistency requirements of subsection 307 (c) and (d) of the Act, and decides which national interest considerations are most important for the State to address with respect to its coastal zone.

(2) At the earliest practicable time in the process of developing the management program relevant Federal agencies should advise the State agency of the extent of their interests in the development of the management program. In particular, Federal agencies should discuss with the State agency the extent to which Federal activities, projects, regulatory actions and/or assistance programs may affect coastal resources. Federal agencies are encouraged to provide the State agency with their interpretations of various national interests related to the planning for and siting of facilities that are more than local in nature or the conservation of various coastal resources. (See section 923.52 for more detail on national interest.) Federal agency statements on national interests should be directed to those policies and issues a State's management program proposes to address or those which a Federal agency believes the management program should address. Federal agencies should provide technical information and other forms of assistance to aid States in their program development efforts.

(g) *Comment.* Statutory Citation, Subsection 307(b):

> The Secretary shall not approve the management program submitted by a State pursuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered.

(1) In addition to the consideration of relevant Federal agency views required during program development, Federal agencies have the opportunity to provide further comment during the program review and approval process. (See Subpart H for details on this process.) Moreover, in the event of a serious disagreement between a relevant Federal agency and designated State agency that relates to those elements required in a State's management program pursuant to sections 305 and 306 of the Act, the mediation provisions of subsection 307(h)(1) of the Act are available. (See § 923.54 for details on mediation.)

§ 923.52 Consideration of national interests.

(a) *General.* The primary purpose in requiring, pursuant to subsection 306(c)(8) of the Act, adequate consid-

eration of national interests involved in the planning for and siting of facilities (which are necessary to meet other than local requirements) is to assure that such facilities are considered in (1) the development of the State's management program, (2) the review and approval of the program by the Assistant Administrator, and (3) the implementation of the program as such facilities are proposed. One need not conclude from this that any and all such facilities proposed for the coastal zone need be sited therein. The Act presumes a balancing of national interests in such facilities as defense installations, energy production and distribution facilities and highways with Federal, State and local concerns involving adverse economic, social or environmental impacts.

(b) *Requirement.* In order to meet the requirements of subsection 306(c)(8) of the Act, States must:

(1) Describe which national interests in the planning for and siting of facilities (which are necessary to meet requirements that are more than local in nature) were considered during program development and the sources relied upon for such consideration;

(2) Indicate how and where the consideration of these national interests is reflected in the substance of the management program including, where appropriate, indication of when and where national interests in identified facilities may compete or conflict with other national interests in coastal resource conservation. In cases of such conflict, the program shall indicate how the conflict has been or can be weighed and resolved;

(3) Describe a process for continued consideration of identified national interests (in facilities which are necessary to meet requirements that are more than local in nature) during program implementation, including a clear and detailed description of the administrative procedures and decision points where such interests can be considered.

(c) *Requirement.* With specific reference to meeting the requirement for adequate consideration of the national interest in the planning for and siting of energy facilities in, or which significantly affect, a State's coastal zone, States shall, in addition to the requirements of (b) above:

(1) Consider any applicable interstate energy plan or program developed pursuant to section 309 of the Act; and

(2) Meet the requirements for an energy facility planning process pursuant to the requirements of § 923.14, except that:

(i) States with a management program approved prior to October 1, 1978, that do not meet the requirements of subsection 305(b)(8) of the Act shall:

(A) Describe existing or developing management program standards or policies as these apply to energy facility planning and siting; and

(B) Describe briefly the status of the planning process required pursuant to subsection 305(b)(8) of the Act.

(d) *Comment.* The 1976 amendments to subsection 306(c)(8) of the Act stress adequate consideration of the national interest in the planning for and siting of energy facilities in or significantly affecting a State's coastal zone. The 1976 amendments also provide in subsection 305(b)(8) of the Act for a specific process related to energy facilities including a process for anticipating and managing the impacts for such facilities. The requirements for that planning process are set forth in § 923.14. The Congress intended this planning process to complement the evaluation of varying national interests pursuant to subsection 306(c)(8) of the Act. It is for this reason that the more specific requirements of (c) above are imposed.

(e) *Comment.* Statutory Citation, Subsection 306(c)(8):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: * * * (8) The management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature. In the case of such energy facilities, the Secretary shall find that the state has given such considerations to any applicable interstate energy plan or program.

(f) *Comment.* In considering the nature of national interests associated with the planning for and siting of facilities that are more than local in nature, States should consult with Federal and other State agencies having responsibilities related to these interests as well as with industries and other relevant entities to determine the potential demand for facilities in each State that are more than local in nature. Moreover, in considering the nature of national interests involved in the planning for and siting of facilities, States also should consult with Federal and other State agencies involved in resource conservation and protection as well as with other relevant entities to determine the nature of resource conservation and protection interests affecting siting considerations. Other factors that should enter into a State's consideration of national interests involved in planning for and siting of facilities are the configuration and size of a State's coastal zone; the quantity, quality and distribution of various coastal resources; and the coastal-dependent nature of those facilities. Below is a table that lists uses that may have facilities associated with them in which there may be a national interest in their planning or siting. This table is illustrative. It is intended as a guide to States as to facilities that normally are appropriate for consideration as to the national interest associated with them. As a State develops its program, it is anticipated that the national interest considerations in that State will begin to be delimited so that the program can focus on the relatively few of the items listed in the table below and the later table that are most significant in that State's coastal zone.

TABLE 1.—*Facilities in which there may be a national interest in planning or siting*

Uses	Associated facilities	Associated Federal agencies
National defense and aerospace.	Military bases and installations; defense manufacturing facilities; aerospace facilities.	Department of Defense, National Aeronautics and Space Administration.
Energy production and transmission.	Oil and gas rigs, storage, distribution and transmission facilities; power plants; deep-water ports; LNG facilities; geothermal facilities; coal mining facilities.	Department of Energy, Department of Interior, Department of Commerce, Department of Transportation, Corps of Engineers.
Recreation	National seashores, parks, forests; large and outstanding beaches and recreational waterfronts.	Department of Interior, Department of Agriculture.
Transportation	Interstate highways, railroads; airports; ports; aids to navigation, including Coast Guard stations.	Department of Transportation, Department of Commerce, Corps of Engineers.
Regional water treatment plants.	Sewage treatment plants; desalization plants.	Environmental Protection Agency, Department of the Interior.

(g) *Comment.* The sources which specify the national interests to be considered during program development and implementation, as required in (b)(1) and (3) above, are numerous. Among these are:

(1) Federal laws and legislation, as for example the Outer Continental Shelf Lands Act, the Department of Energy Reorganization Act, the National Highways Act, the Federal Water Pollution Control Act, and the Clear Air Act;

(2) Policy statements from the President, as for example the National Energy Plan; the National Environmental Message and associated execu-

tive orders on wetlands and floodplains; the national Outdoor Recreation Plan;

(3) Statements from Federal agencies regarding national interests specifically related to a State's coastal zone, including such statements as may be provided by the Assistant Administrator as part of NOAA's ongoing assistance to States on this matter; and

(4) Plans, reports and studies from Federal, State, interstate agencies or from interstate groups, as for example interstate energy plans.

(h) *Comment.* In meeting the requirements of (a)(2) above to indicate if conflicts occur in the management program between facilities in which there are national interest considerations and resource protection, and how these conflicts may be resolved, States may want to refer to the nature of national interests associated with particular resources. Below is a table suggesting resources in which there may be national interests. As with the table above, this listing is illustrative and not all-inclusive. States should examine sources similar to those noted in paragraph (g) above for specification of the national interests in these resources.

TABLE 2.—*Resources in which there may be a national interest*

Resources	Major related Federal legislation	Associated Federal agencies
Water	Federal Water Pollution Control Act.	Environmental Protection Agency. Corps of Engineers.
Air	Clean Air Act	Environmental Protection Agency.
Wetlands	Federal Water Pollution Control Act; Fish and Wildlife Coordination Act.	Corps of Engineers, Environmental Protection Agency, Department of Interior, Department of Commerce.
Endangered flora and fauna.	Endangered Species Act	Department of Interior, Department of Commerce.
Flood plains and erosion hazard areas.	Flood Insurance Act	Housing and Urban Development, Corps of Engineers, Department of Agriculture.
Barrier islands and beaches..	Coastal Zone Management Act	Department of Interior, Department of Commerce, Corps of Engineers.
Historic and cultural resources.	National Historic Preservation Act	Advisory Council on Historic Preservation.
Wildlife refuges and reserves	Pitman-Robinson Act; Dingall-Johnson Act; Land and Water Conservation Fund Act.	Department of Interior, Department of Commerce.
Areas of unique cultural significance.	National Historic Preservation Act	Advisory Council on Historic Preservation, Department of Interior.
Minerals	Mineral Leasing Act	Department of Interior.
Prime agricultural lands	Homestead Act	Department of Agriculture.
Forests	National Forest Management Act	Department of Agriculture, Department of Interior.
Living marine resources	Fisheries Conservation and Management Act; Marine Mammal Protection Act.	Department of Commerce, Department of Interior.

(i) *Comment.* In evaluating the adequacy of a State's consideration during program development of national interests involved in the planning for or siting of facilities which may be more than local in nature, the Assistant Administrator shall assess the reasonableness of:

(1) The claims made and sources used to specify national interests;

(2) Consideration given in the management program to varying national interests, including the relative weighing of competing interests;

(3) Responses to major siting concerns raised by Federal agencies or other interested parties, including considerating of any applicable interstate energy plan or program developed pursuant to section 309 of the Act; and

(4) Adequacy of the procedures described by the State for continued consideration of national interests after program approval.

§ 923.53 Federal consistency procedures.

(a) *Requirement.* States shall include in their management program submission, as part of the body of the submission or as an appendix or an attachment, the provisions they will use to implement the Federal consistency requirements of subsections 307 (c) and (d) of the Act. These provisions shall include, at a minimum, the following:

(1) An indication of whether the State agency designated pursuant to subsection 306(c)(5) of the Act or a single other State agency will handle consistency review (see 15 CFR 930.18);

(2) a list of Federal license and permit activities that will be subject to review (see 15 CFR 930.53);

(3) for States anticipating coastal zone effects from Outer Continental Shelf (OCS) activities, the license and permit list also must include OCS plans which describe in detail Federal license and permit activities (see 15 CFR 930.74; and

(4) the public notice procedures to be used for certifications submitted for Federal license and permit activities and, where appropriate, for OCS plans (see 15 CFR 930.61–930.62 and 930.78).

(b) *Comment.* The management program may include the following provisions:

(1) a list of Federal activities, including development projects, which in the opinion of the State agency are likely to significantly affect the coastal zone and thereby will require a Federal agency consistency determination (see 15 CFR 930.35);

(2) a description of the types of information and data necessary to assess the consistency of Federal license and permit activities and, where appropriate, those described in detail in OCS plans (see 15 CFR 930.56 and 930.75); and

(3) For Federal assistance applications outside the coastal zone the State agency chooses to review, a description of the geographic area within which Federal assistance activities will be subject to review (see 115 CFR 930.94).

(c) *Comment.* The management program should include a brief explanation of the Federal consistency requirements contained in subsections 307(c) (1), (2), (3) and (d) of the Act in order to provide affected parties with this basic information.

(d) *Comment.* For further guidance on structuring the implementing provisions of the Federal consistency requirements, see 15 CFR 930.

§ 923.54 Mediation.

(a) The Act provides for the mediation of "serious disagreements" between any Federal agency and a coastal State during the development or initial implementation of a management program. This provision in the Act further reinforces Congress' acknowledgement that State-Federal differences may arise and should be resolved during program development or implementation. In certain cases, mediation by the Secretary or his/her designee, with the assistance of the Executive Office of the President, may be an appropriate forum for conflict resolution. This section describes the conditions of and processes for mediation of serious disagreements that may arise during program development. Mediation provisions for handling serious disagreements during full program implementation are quite similar and are discussed in 15 CFR Part 930.

(b) *Comment.* Statutory Citation, Subsection 307(h):

> In the case of serious disagreement between any Federal agency and a coastal state:
>
> (1) in the development or the initial implementation of a management program under section 305 * * *
>
> The Secretary, with the cooperation of the Executive Office of the President, shall

seek to mediate the differences involved in such disagreement * * *

(c) State-Federal differences that arise during program development should be addressed initially by the parties involved. Whenever a serious disagreement cannot be resolved between the parties concerned, either party may request the informal assistance of the Assistant Administrator in resolving the disagreement. This request shall be in writing stating the points of disagreement and the reasons therefor. A copy of the request shall be sent to the adversary party.

(d) If a serious disagreement persists, Secretarial mediation shall be provided to the parties to the serious disagreement when requested of the Secretary in writing by either party and when all parties agree to participate in the mediation effort. A copy of the written request must be sent to the parties to the serious disagreement and to the Assistant Administrator.

(e) Within 15 days following receipt of a request for mediation, the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation indicating whether it wishes to participate in the mediation process. The Secretary will not provide mediation assistance unless all parties to the serious disagreement agree to participate.

(f) If all parties agree to mediation, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, and the disagreeing Federal and State agencies. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference. Notice also shall be placed in the FEDERAL REGISTER to allow other parties an opportunity to make known to the Secretary in writing their interest in the disagreement.

(g) Secretarial mediation efforts shall last only so long as the parties agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

(h) Mediation shall terminate: (1) At any time the parties agree to a resolution of the serious disagreement, (2) if one of the parties withdraws from mediation, (3) in the event the parties fail to reach a resolution of the serious disagreement within 15 days following Secretarial mediation efforts, and the parties do not agree to extend mediation beyond that period, or (4) for other good cause.

(i) If the conflict resolution efforts described above do not resolve the disagreement, the Assistant Administrator shall determine whether inclusion in the management program of the State agency's position in the disagreement affects the Assistant Administrator's ability to approve the State's management program. The Assistant Administrator shall communicate his/her determination in writing, with the reason(s) therefor, to the parties to the disagreement.

§ 923.55 Full participation.

(a) *Requirement.* In addition to consultation with Federal agencies, subsection 306(c)(1) of the Act requires that the opportunity for full participation in program development be provided State agencies, local governments, regional organizations, port authorities and other interested public or private parties. To meet this requirement with respect to governmental entities (other than Federal) and other public or private parties, States shall:

(1) Develop and make available general information regarding the program design, its content and its status throughout program development;

(2) Provide a listing, as comprehensive as possible, of all governmental agencies, regional organizations, port authorities and public and private organizations likely to be affected by or have a direct interest in the development and implementation of the management program;

(3) Indicate the nature of major comments received from interested or affected parties, as identified in (2) above, and the nature of the State's response;

(4) Coordinate the contents of the management program with local, areawide or interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Assistant Administrator;

(5) Establish a mechanism to provide for continuing coordination with affected parties after program approval, including specifically establishment of a mechanism for State-local consultation with respect to State activities that may conflict with local zoning;

(6) Hold public meetings, workshops, etc., during the course of program development at accessible locations and times, with reasonable notice and availability of materials; and

(7) Hold public hearings during the development of the management program, at least one of which shall be on the scope of the entire program.

These requirements are discussed in greater detail in the commentary that follows and in the three sections that follow.

(b) *Comment.* Statutory Citation, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: (1) the state has developed and adopted a management program for its coastal zone * * * with the opportunity of full participation by * * * state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private * * *

(c) *Comment.* As noted in the general introduction to this subpart, the most effective means for assuring that the opportunity for full participation has been provided is to initiate appropriate activities early during program development and to continue such efforts on a timely basis throughout the program development process. Moreover, the requirement to provide opportunities for input from and participation by interested or affected parties does not end with program approval, as witness subsection 306(c)(2)(B) of the Act which requires the establishment of a mechanism for continuing State-local consultation on particular matters after program approval. (See § 923.57 for details on the requirements of subsection 306(c)(2)(B).)

(d) *Comment.* Public information may take many forms, among which the following should be given consideration:

(1) Brochures and reports made available in places of public congregation such as libraries, government buildings, stores or transit facilities;

(2) Radio, television and personal presentations;

(3) Press announcements;

(4) Public meetings or hearings;

(5) Exhibits;

(6) Telephone "hot lines;" and

(7) Films and slide shows.

(e) *Comment.* States should also consider establishing advisory committees and/or technical advisory boards comprised of public citizens representing specific interests, local government representatives, and or State and Federal agency representatives. These committees and boards may serve a number of useful purposes: providing information needed to develop the management program; serving as a conduit and evaluator of public interests and concerns; and determining major program directions.

§ 923.56 Plan coordination.

(a) *Requirement.* In order to meet the requirements of subsection 306(c)(2)(A) of the Act and the associated requirements of § 923.55(a)(4), States shall coordinate the contents of the management program with local, areawide or interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Assistant Administrator for approval. Evidence of coordination shall be documented in the management program by:

(1) Identifying local governments, areawide agencies designated pursuant to regulations established under section 204 of the Demonstration Cities

and Metropolitan Development Act of 1966, regional agencies or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which the management program is submitted.

(2) Listing or providing a general summary of substantive contacts with these entities to coordinate the management program with their plans; and

(3) Identifying conflicts with those plans of a regulatory nature that are unresolved at the time of program submission and the means that will be used to resolve these conflicts.

(b) *Comment.* Statutory Citation, Subsection 306(c)(2)(A):

Prior to granting approval to a management program submitted by a coastal state, the Secretary shall find that * * *

(2) The State has: (A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, and areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency * * *

(c) *Comment.* The process envisioned by this subsection of the Act should enable a State not only to avoid duplication of and conflict between its program and other plans applying within its coastal zone but also to draw upon the planning capabilities of and work already completed by a wide variety of local governments and other agencies. Particular attention shall be given to land use plans prepared pursuant to section 701 of the Housing and Urban Development Act of 1968, as amended; State and areawide waste treatment facility or management plans prepared pursuant to sections 201 and 208 of the Federal Water Pollution Control Act, as amended; plans and designations made pursuant to the Flood Insurance Act of 1974; and any applicable interstate energy plans or programs developed pursuant to section 309 of the Act; and regional and interstate highway plan adopted by a governmental entity as of January 1 of the year in which the management program is submitted. States shall take into consideration the contents of such Federal interagency agreements as OCZM has entered into with respect to this Act, as for example the OCZM-HUD; and OCZM-EPA interagency agreements.

(d) *Comment.* In order to meet the requirements of (a) (2) and (3) above use of State and areawide clearinghouses, established pursuant to OMB Circular A-95 (revised) will suffice: (1) as a means of contacting all relevant entities provided that such entities are among the recipients of clearinghouse notices and (2) as a mechanism for identifying and resolving conflicts.

(e) *Comment.* Another means of meeting the requirements of (a) (2) and (3) above could be use of a committee or task force of local, regional, State and/or interstate officials, as appropriate, to identify and coordinate relevant plans.

§ 923.57 Continuing consultation.

(a) *Requirement.* In order to meet the requirements of subsection 306(c)(2)(B) of the Act and the associated requirements of § 923.55(a)(5), States shall:

(1) Establish a mechanism which will provide for continuing consultation and coordination after program approval between local governments, regional, areawide, interstate and other State agencies with activities in the coastal zone and the State agency designated pursuant to subsection 306(c)(5) of the Act; and

(2) Establish a mechanism specifically designed to insure continued State-local government consultation on State management program decisions that would conflict with any local zoning ordinance, decision or other action.

(b) *Comment.* Statutory Citation, subsection 306(c)(B):

Prior to granting approval to a management program submitted by a coastal state, the Secretary shall find that * * *

(2) The state has * * *

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this section and with local governments, interstate agencies, regional agencies, and area-wide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be "effective" for purposes of this subparagraph unless it includes each of the following requirements:

(i) Such management agency is required, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, to send a notice of such management program decision to any local government whose zoning authority is affected thereby.

(ii) Any such notice shall provide that such local government may, within the 30-day period commencing on the date of receipt of such notice, submit to the management agency written comments on such management program decision, and any recommendation for alternatives thereto, if no action is taken during such period which would conflict or interfere with such management program decision unless such local government waives its right to comment.

(iii) Such management agency, if any such comments are submitted to it, within such 30-day period, by any local government:

(I) is required to consider any such comments,

(II) is authorized, in its discretion, to hold a public hearing on such comments, and

(III) may not take any action within such 30-day period to implement the management program decision, whether or not modified or the basis of such comments.

(c) *Comment.* In meeting the requirement of (a)(1) above for establishing a general mechanism for continuing consultation and coordination, States should consider use of the OMB Circular No. A-95 (revised) Project Notification and Review System as the required mechanism provided that affected local governments, areawide, regional, interstate and other State agencies are part of the notification system.

States also should consider the possibility of establishing or utilizing councils, committees, task forces, etc, with representation from affected local governments, areawide, regional, interstate and other State agencies, as appropriate, as a vehicle for providing continuing consultation and coordination after program approval. Such a council, etc., when it includes local government representation, may be a helpful vehicle in meeting the requirements of (a)(2) above and as further discussed in comment (d) below.

(d) *Comment.* The purposes of the State-local consultation mechanism contained in subparagraphs (i), (ii) and (iii) of subsection 306(c)(2)(B) of the Act are:

(1) To provide explicitly in a State's management program for a mechanism to inform local governments with zoning authority of management program plans or policies which could conflict with such zoning authority;

(2) To allow local governments an opportunity to comment on State management program plans and policies which conflict with local government zoning;

(3) To require the State management agency to consider such comments, during which time it may hold a public hearing (at its discretion) on the matter, and to refrain from taking action to implement the proposed management program plan or policy during the comment period; and

(4) To permit the State management agency to implement the management program decision in the event the local government waives its right to comment, concurs with the proposed action, or takes action during the comment period which conflicts or interferes with the proposed State management program decision (in which case, a local government forfeits its right to comment).

(e) *Comment.* Coastal Zone management development and implementation is a dynamic process. Congress recognized that an effective means for pursuing this process required not only increased efforts by coastal State governments, but also participation by local governments. In its amendment of section 306(c)(2)(B) of the Act, Congress specifically developed a provision that major State policies and plan decisions to be implemented pursuant to an approved State management pro-

gram require notice to legal governments when such decisions could conflict with local government zoning. For the purposes of this section, the following terms shall have the following meanings:

(1) "Management agency" refers to the State agency designated by the Governor pursuant to subsection 306(c)(5) of the Act and to any other State agency responsible for implementing a management program decision;

(2) "Management program decision" refers to any major, discretionary policy decisions on the part of a management agency, such as the determination of permissible land and water uses, the designation of areas of particular concern or areas for preservation or restoration, or the decision to acquire property for public uses. Regulatory actions dictated by State legislation, such as individual permit actions, which are taken pursuant to these major decisions are not subject to the State-local consultation mechanism. Examples of what might constitute a major management program decision include, but are not limited to:

(i) A State management agency decision that a certain class of wetlands may not be filled and/or developed;

(ii) A decision prohibiting the development of non-water dependent facilities on certain shoreline areas;

(iii) A decision requiring that new development on the shoreline may not interfere with existing public rights of access to the sea, and that new developments of a certain magnitude are required to provide public access as part of the development;

(iv) A decision to acquire urban shoreland for recreational purposes; or

(v) Designation of coastal historic resources or natural areas as areas for preservation or restoration, when any of these are discretionary, and not legislatively mandated, decisions of a management agency.

(3) "Conflict" (with a local zoning ordinance, decision or other action). A State management program decision may be considered to be in conflict with a local zoning ordinance if the decision is contradictory to that ordinance, including local ordinances that impose additional requirements beyond those of the State's program. However, a State management program decision that consists of additional but different requirements shall not be considered to be in conflict with a local zoning ordinance, decision or other action;

(4) "Local zoning ordinance, decision or other action" refers to any local government land or water use action which regulates or restricts the construction, alteration or use of land, water or structures thereon or thereunder. These actions include zoning ordinances, master plans and official maps. Accordingly, a local government has the right to comment on a State management program decision when such decision conflicts with the above specified actions;

(5) "Written comment" from local governments shall be submitted in writing to the State management agency and may include recommendations for alternative actions and/or a request for a public hearing on the management program decision;

(6) "Waiver" of the right of a local government to comment (thereby permitting a State agency to proceed immediately with implementation of the management program decision) shall result:

(i) Following State agency receipt of a written statement on the part of local government:

(A) Waiving its right to comment; or

(B) Concurring with the management program decision; or

(C) Indicating the local government intends to take action which conflicts or interferes with the management program decision; or

(ii) Following a public statement by a local government to the effect of (A), (B) or (C) above; or

(iii) Following an action by a local government that conflicts or interferes with the management program decision.

A waiver of the right to comment or a waiver indicating concurrence may also be presumed if the local government fails to submit written comments to the State agency within the 30-day comment period. OCZM strongly encourages local governments not to effect a waiver by silence as this process causes needless delay in implementing a management program decision.

(f) *Comment.* The purpose of this notice and comment procedure is to enable State agencies and local governments to achieve a consensus, when appropriate and possible, with respect to proposed State land and water use decisions. Local governments are encouraged to submit comments to State agencies in order to try to assure that policies and plans developed at the State level have sufficient flexibility to accommodate the various and diverse needs of coastal communities. For example, in response to a State agency management decision proposing to prohibit development of non-water dependent commercial uses on the shoreline within the jurisdiction of a local government, that local government might comment that the restriction conflicts with an urban waterfront zoning ordinance that selectively permits such developments as a means of promoting the economic viability of a redeveloping area. Based on such comments, the State management agency might be persuaded to modify its original proposal. It should be noted, however, that the requirements of subsection 306(c)(2)(B) are not intended to deflect from one of the basic purposes of the Act—that of encouraging States to exercise effectively their responsibilities to achieve wise use of land and water resources of the coastal zone. Accordingly, while the purpose of this specific consultation requirement is to establish a process for discussion of differences, the ultimate administrative authority to resolve conflicts shall be the State management agency.

(1) State programs must detail a procedure whereby local governments with zoning authority are notified of management program decisions which will affect their jurisdiction. For purposes of this consultation mechanism, local governments are those defined in section 304(10) of the Act which have some form of zoning authority. Such notice must be in writing and must inform the local government of its right to submit comments to the State management agency in the event the proposed State management program decision conflicts with a local zoning ordinance decision or other action. States are encouraged to use, where possible, existing procedures such as those established in administrative procedures acts. The effect of providing such notice is to stay State action to implement its management decision for at least a thirty-day period unless the local government waives its right to comment.

(2) State management programs also must provide that the management agency adequately consider all comments received by local government(s). This consideration should include a written response by the management agency to the local government(s), within a reasonable period of time following receipt of local comments, as to the outcome of that agency's consideration of local comments. Such consideration may include a decision, at the discretion of the management agency, to hold a public hearing. The State management program also must set forth public notice and other hearing procedure requirements. In the event that a local government requests a public hearing and such a request is granted, the State management program may provide or require that the local government requesting such hearing shall provide the required public notice and/or meeting facility. In the event a public hearing is held, the management agency shall provide written response to the affected local government, within a reasonable period of time and prior to implementation of the management program decision, on the results of the agency's consideration of public hearing comments.

(3) State management programs shall include a provision indicating the

procedures to be followed by a management agency regarding implementation of a management program decision following receipt of a local government's comments.

(4) State mangement programs are encouraged to include a provision requiring notification in writing from local governments to the appropriate State agency of any action taken during the 30-day comment period which conflicts or interferes with the proposed management program decision. State management programs also should include a provision for local governments to waive their right to comment. In those instances where the local government chooses to waive is opportunity to comment, or concurs with the State management decision, there is no need for further delay in implementing the proposed State management decision. In order to apprise the State agency of these views, local governments are strongly encouraged to transmit such views in writing to the State agency (using the procedure described in the State's management program). Otherwise, the State agency will be compelled to await unnecessarily the expiration of the 30-day comment period before proceeding with the proposed decision. A local government forfeits its right to comment on a proposed management agency decision, and to request a public hearing when the local government takes action during the comment period which confiicts or interferes with the proposed management decision. Where a local government intends to take such conflicting or interfering action. OCZM strongly encourages local governments to so advise the State agency in writing.

(5) State management programs should indicate what action the State agency will take in the event a local government pursues a conflicting or interfering action. States are encouraged to develop their responses to conflicting local actions within the framework of sections 306(d)(1) and 306(d)(2) of the Act. Section 306(d)(1) of the Act provides, inter alia, that the State has the management authority to resolve conflicts among competing uses. Sections 306(e)(2) of the Act requires that the management program provide for a method of assuring local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land or water uses or regional benefit.

§ 923.58 Public hearings.

(a) *Requirement.* In order to meet the requirements of subsections 306(c)(1) and (c)(3) and section 311 of the Act and the associated requirements of § 923.55(a)(7), States shall:

(1) Hold a minimum of two public hearings during the course of program development, at least one of which will be on the total scope of the coastal management program;

(2) Provide a minimum of 30 days public notice of hearing dates and locations; and

(3) Make available, at the time of public notice, all agency materials pertinent to the hearings.

(b) *Comment.* Statutory Citation, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state the Secretary shall find that:

(1) The state has developed and adopted a management program for its coastal zone * * * after notice * * *

(c) *Comment.* Statutory Citation, Subsection 306(c)(3):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * *

(3) The state has held public hearings in the development of the management program.

(d) *Comment.* Statutory Citation, Section 311:

All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

(1) Notification of public hearings should provide the public the longest period of notice practical, but in no event should notice be less than the 30 day statutory minimum. Announcement of the hearings should be through media designed to inform the public—not merely to provide "technical notice." Therefore, in addition to any publication of legal notice as required by State law, reasonably informative news releases should be made available to the news media in the affected communities.

(2) At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study in the locale where the hearings are to be conducted.

(3) Hearings on the total management program do not have to be held on the actual document submitted to the Assistant Administrator for section 306 approval. However, such hearing(s) must cover the substance and content of the proposed management program in such a manner that the general public, and particularly affected parties, have a reasonable opportunity to understand the impacts of the management program. If the hearing(s) are not on the management document per se, all requests for such document must be honored and comments on the document received prior to submission must be considered.

(4) Hearings should be held in those geographic areas which would be most affected by the issues under consideration at the hearing. Hearings on the total management program should be held in places within the State where all citizens of the State may have an opportunity to comment.

(5) In many cases, the population of the coastal zone fluctuates significantly with the seasons of the year. Efforts should be made to insure that hearings were held when those populations most likely to be affected are present.

(6) A verbatim transcript of the hearings need not be prepared but a comprehensive summary should be made available to the public within forty-five (45) days after the conclusion of the hearings. A copy of these summaries shall be summitted with the program document or within thirty (30) days following formal program submittal.

Subpart G—Miscellaneous

§ 923.60 General.

The purposes of this subpart are to provide guidance on (a) meeting the requirements of subsection 306(h) of the Act dealing with segmented management programs and (b) fulfilling the requirements for an environmental impact assessment which all management program submissions, whether for a State's total coastal zone or a segment, must contain.

§ 923.61 Segmentation.

(a) If a State intends to adopt its management program in two or more segments, it shall so advise the Assistant Administrator as early as practicable, stating the reasons for segmenting the program and requesting the Assistant Administrator's approval. In addition to meeting the approval requirements of these regulations, each segment of a management program must demonstrate that:

(1) The segment includes a geographic area on both sides of the coastal landwater interface;

(2) A timetable and budget have been established for the timely completion of the remaining segment(s); and

(3) The State will exercise policy control over each segment of its management program prior to and following its integration into a complete State management program. Demonstration of this control will include (i) completion of the management boundary determination for the entire coastal zone throughout the State and (ii) consideration of the national interest throughout the State's entire coastal zone in the planning for and siting of facilities cited in § 923.52.

(b) *Comment.* Statutory Citation, Section 306(h):

At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: Provided, that the state adequately provides for the ultimate coordination of the various segments of the management program into a single, unified program, and that the unified program will be completed as soon as reasonably practicable.

(1) This section of the Act reflects a recognition that it may be desirable for a State to develop and adopt its management program in segments rather than all at once because of a relatively long coastline, developmental pressures or public support in specific areas, or earlier regional management programs already developed and adopted. It is important to note, however, that the ultimate objective of segmentation is completion of a management program for the coastal zone of the entire State in a timely fashion. Segmentation is at the State's option, but requires the approval of the Assistant Administrator. States should notify the Assistant Administrator as early as possible regarding intention to prepare a management program in segments.

(c) *Comment.* Continuing involvement at the State as well as local level in the development and implementation of segmented programs is essential. This emphasis on State participation and coordination with the program as a whole should be reflected in the individual segments of a management program. Regional agencies and local governments may play a large role in developing and carrying out such segmented programs, but there must be a continuing State voice throughout this process. This State involvement shall be expressed in the first segment of the management program in the form of evidence that (i) the boundaries of the coastal zone for the entire State have been defined (pursuant to Subpart D) and (ii) there has been adequate consideration of the national interest involved in the planning for and siting of facilities necessary to meet requirements which are other than local in nature (pursuant to § 923.52) for the State's entire coastal zone. These requirements are designed to assure that the development of a Statewide coastal zone management program proceeds in an orderly fashion and that segmented programs reflect accurately the needs and capabilities of the State's entire coastal zone which are represented in that particular segment.

(1) It is recognized that small islands may form separate and valuable ecological units for which a segment of the management program may be established with relatively few problems. The Assistant Administrator may waive certain requirements under this section Related to segmented approval for islands. The requirements that the State must (1) provide an adequate consideration of the national interest in the planning for and siting of facilities necessary to meet requirements which are other than local in nature for the State's entire coastal zone and (2) define the boundaries of the coastal zone for the entire State may be waived if the Assistant Administrator determines that their completion would serve no useful purpose in evaluating the merits of the application for approval of a small island segment.

(d) *Comment.* One of the distinguishing features of a coastal zone management program is its recognition of the relationship between land uses and their effect upon coastal waters, and vice versa. Segments should likewise recognize this relationship between land and water by including at least the dividing line between them, plus the lands and waters on either side which are mutually affected. In the case of a segment which is predominatly land, the boundaries shall include those waters which are directly and significantly impacted by land uses in the segment. Where the predominant part of the segment is water, the boundaries shall include the adjacent shorelands strongly influenced by the waters, including at least islands, transitional and intertidal areas, salt marshes, wetlands and beaches (or similar such areas in Great Lakes States). A segmented management program shall not be developed solely for the purpose of protecting or controlling a single coastal resource or use, however desirable that may be.

(e) *Comment.* Segmented management programs submitted for approval will be reviewed and approved in the same manner as programs for complete coastal zones, utilizing the same approval criteria, plus those of this section. States submitting segmented programs have the option of including the three planning elements required by subsections 305(b) (7), (8) and (9) of the Act as part of the segment submission or as part of the final submission which integrates the segments into a single, unified program.

§ 923.62 Environmental impact assessments.

(a) *Requirement.* All State management program submissions must contain an environmental impact assessment that meets the requirements of the national Environmental Policy Act (NEPA). At present Council of Environmental Quality (CEQ) Guidelines require the following items be addressed (although not necessarily in the same order presented below):

(1) A description of the proposed action;

(2) A description of the environment affected;

(3) The relationship of the proposed action to land and water use plans, policies, and controls for the area;

(4) The probable impact of the proposed action on the environment;

(5) Alternatives;

(6) Probable adverse environmental effects which cannot be avoided;

(7) The relationship between local, short-term uses of the environment and the maintenance and enhancement of long-term productivity;

(8) Irrevocable or irretrievable commitments of resources that would be involved in the proposed action should it be implemented; and

(9) Consultation and coordination with others.

(b) *Comment.* A number of these items should already be addressed in the State's program submission. In these cases a simple cross-referencing will be sufficient:

(1) The State's "description of the proposed action" should focus on the issues that the management program is designed to address and the means by which these issues will be addressed through implementation of the management program. This should already be part of the basic program submission. Accordingly in the environmental impact assessment appendix, this item can be cross-referenced to the appropriate page(s) or section(s) of the submission. If a State is following the format for submission suggested in § 923.71, references to relevant portions of the "Summary," "Framework of Program Development," and "Policies" would be appropriate.

(2) The "description of the environment affected"—the State's coastal zone and the natural and manmade resources therein—also should already be part of the program document submitted for approval. Cross-reference should be made to relevant sections. If following the format suggested in § 923.71, reference to "Framework of Program Development" would be appropriate.

(3) Again, cross-reference to relevant sections of the program submission should suffice to explain "the relationship of the proposed action to land and water use plans, policies and controls to the areas." Particular reference should be made to those sections addressing the requirements of §§ 923.3—General Requirements; 923.11—Uses Subject to Management; 923.13—Uses of Regional Benefit; 923.41—Identification of Authorities; 923.42—Control Techniques; 923.43—Authorities Related to Uses of Regional Benefit; and 923.56—Plan Coordination.

(4) The discussion of "the probable impact of the proposed action on the environment" is the major aspect a State will need to address as part of the environmental impact assessment appendix attached to its submission.

The purpose of this discussion is to indicate, to the extent possible given data and time constraints, the environmental, social and economic changes that can be expected to result from implementation of the State's management program. In turn, this will provide information, either explicitly or implicitly, on both the level and distribution of costs and benefits to affected parties. In effect, this discussion should make explicit many of the assumptions that have gone into developing and framing a State's management program. The environmental and corresponding socio-economic impacts that can be expected to result from program implementation will depend, in large measure, on the nature of proposed implementation techniques. Moreover, not all aspects of the State's management program will necessarily involve changes and/or environmental impacts. This may be so particularly where States will be relying on pre-existing management and regulatory techniques. However, to the extent these existing techniques are applied in new ways and thereby create new impacts (such as greater efficiencies in permit processing or, conversely, increased time required for permit reviews), these changes should be noted. The level of specificity regarding probable impacts will vary depending on (i) the level of specificity contained in the management program itself, (ii) the size of the area to be managed, and (iii) the amount of time, money and personnel allocated to this task.

(5) The discussion of "alternatives" should focus on those alternatives that have been considered seriously and reviewed at some length by OCZM. In addition, alternatives which raised substantial public debate as a result of consultation and public participation during program development should be discussed. Usually these alternatives will relate to management techniques, boundaries and uses subject to management. To the extent these alternatives are discussed in the body of the management program document, cross-reference will suffice.

(6) Since the program document probably will not contain an explicit discussion of "probable adverse environmental impacts which cannot be avoided," this aspect should be addressed in the environmental impact assessment appendix. Where the program encourages certain uses or development activities which may have a probable adverse environmental impact, these should be identified. In addition, since "environmental impacts" may cause socioeconomic impacts of an adverse nature, these also should be discussed. This discussion may be done in conjunction with a discussion of the "relationship between local, short-term uses of the environment and the maintenance and enhancement of long-term productivity." It is also possible to combine both of these discussions with that of "probable impact of the proposed action on the environment" provided that it is clearly stated that all three aspects have been combined into one discussion in the environmental impact assessment.

(7) In discussing the "relationship between local, short-term uses of the environment and the maintenance and enhancement of long-term productivity," it may be reasonable to assume that, while there may be short-term negative impacts on particular aspects of the environment, over the long-term, effectuation of the State's management program should contribute to maintenance, and possibly enhancement, of productivity. However, where short-term environmental disruptions can be identified, such identification should be made and discussed.

(8) Again, since the program document probably will not contain an explicit discussion of "irretrievable commitments of resources," this aspect should be addressed in the environmental impact assessment appendix. The option exists to include this discussion in with some of the other aspects indicated above.

(9) Discussion of "consultation and coordination with others" should already be addressed in the program document and/or as an appendix documenting opportunities for full participation. Accordingly, appropriate cross-referencing should be made, especially to those sections that address the requirements of Subpart F.

(c) *Comment.* OCZM will use the information provided in a State's environmental impact assessment (EIA) to determine if an environmental impact statement (EIS) is required. When an EIS is required pursuant to NEPA, OCZM will develop a draft EIS covering the Assistant Administrator's proposed action of approving the management program. The timing and review procedures for the EIS are discussed in § 923.72.

Subpart H—Review/Approval Procedures

§ 923.70 General.

The purpose of this subpart is to describe the process of State program review and approval following submission of a State's management program. Because the review process usually involves preparation and dissemination of draft and final environmental impact statements and lengthy Federal agency review, States should anticipate that it normally will take 7 months between the time a State first submits a draft management program to OCZM for threshold review and the point at which the Assistant Administrator makes a final decision on whether to approve the management program. Certain factors will contribute to lengthening or shortening this timetable; these factors are discussed in the sections that follow. This subpart also provides guidance on a recommended format for the program document submitted to the Assistant Administrator for review and approval. In addition, this subpart provides criteria for receiving, reviewing and providing preliminary approval of State coastal management programs pursuant to subsection 305(d) of the Act.

§ 923.71 Recommended format for program submissions.

(a) This guidance is provided in response to requests from a number of States for a suggested format. States should note, however, that this format is not mandatory. As long as States address all the sections of the Act and associated requirements of these regulations, the presentation of their management program may be in such format as best suits their situation provided that such format has been discussed with and agreed to by OCZM.

(b) States should include an index with their program submission that indicates where in the management program document the information can be found which is necessary to make the findings required by the Act and associated requirements of these regulations. A chart is provided below of the findings required by the Act and associated requirements of these regulations. This chart should assist States in developing the index. If States use the chart below as an index, it is recommended that a third column entitled *Page Number* be added to expedite review of management programs.

CHART.—*Findings necessary for sec. 306 approval*

Section of the act	*Associated section(s) of these regulations*
Sec. 306(a) which includes the requirements of sec. 305:	
305(b)(1): Boundaries	923.31, 923.32, 923.33, 923.34
305(b)(2): Uses subject to management	923.11, 923.12
305(b)(3): Areas of particular concern	923.21, 923.23
305(b)(4): Means of control	923.41
305(b)(5): Guidelines on priorities of uses	923.22
305(b)(6): Organizational structure	923.45
305(b)(7): Shorefront planning process[1]	923.25
305(b)(8): Energy facility planning process[1]	923.14
305(b)(9): Erosion planning process[1]	923.26

CHART.—*Findings necessary for sec. 306 approval*—Continued

Section of the act	*Associated section(s) of these regulations*
Sec. 306(c) which includes:	
306(c)(1): Notice; full participation; consistent with sec. 303	923.58, 923.51, 923.55, 923.3
306(c)(2)(A): Plan coordination	923.56
306(c)(2)(B): Continuing consultation mechanisms	923.57
306(c)(3): Public hearings	923.58
306(c)(4): Gubernatorial review and approval	923.47
306(c)(5): Designation of recipient agency	923.46, 923.47
	923.45, 923.47
306(c)(6): Organization	923.41, 923.47
306(c)(7): Authorities	923.52
306(c)(8): Adequate consideration of national interests	923.24
306(c)(9): Areas for preservation/restoration	
Sec. 306(d) which includes:	
306(d)(1): Administer regulations, control development; resolve conflicts	923.41
306(d)(2): Powers of acquisition, if necessary	923.41
Sec. 306(e) which includes:	
306(e)(1): Technique of control	923.41, 923.42
306(e)(2): Uses of regional benefit	923.13, 923.41, 923.43
Sec. 306(h): Segments[2]	923.61
Sec. 307 which includes:	
307(b): Adequate consideration of Federal agency views	923.51
307(f): Incorporation of air and water quality requirements	923.44

[1] Not required before Oct. 1, 1978.
[2] Applicable only to segmented management programs.

(c) OCZM recommends the following format for coastal management program submissions: Summary; Framework of Program Development; Policies; and 306 Requirements. OCZM also recommends the following items as appendices: Documentation of Governmental Consultation and Public Participation Efforts; Summaries of Required Public Hearings; Text of Relevant Legal Authorities; Environmental Impact Assessment (EIA); and such other Technical Reports, Maps, Organizational Charts or other materials as a State feels would be useful in reviewing the management program. The elements of the main body of the management program are discussed in greater detail below:

(1) Summary—This section should serve as an executive summary of the program and should describe briefly the major elements of the State's management program. This section also should include a discussion of objectives the State will seek to attain through implementation of its management program. Specific milestones and timeframes for accomplishment of these objectives should be established where possible. This information will be useful in conducting the annual review of approved programs required pursuant to section 312 of the Act.

(2) Framework of Program Development—This section should address the major coastal issues and problems identified during the program development process, the nature of those issues and problems, and how the management program can help to resolve them. This section should include a discussion of the major coastal natural resources and human activities which are important, unique and/or subject to intense pressures or conflicts. A brief discussion of the institutional setting within which the program was developed and some of the major considerations or alternatives that led to particular management approaches is appropriate as part of this section. In addition, there should be a brief discussion of those issues and problems which the program may not address initially but which will be taken into consideration during program implementation and/or future program refinements.

(3) Policies—This section should contain those policies that provide the basis for a comprehensive, enforceable and predictable management program. These policies should be tied to issues and problems (discussed in (2) above) and to legal authorities (discussed in (4) below).

(4) 306 Requirements—In this section States should demonstrate that the sections of the Act and these regulations necessary for approval have been met. The following contents are suggested:

(i) Boundaries—The requirements of subsection 305(b)(1) of the Act and Subpart D of these regulations should be addressed. States may want to indicate here, or as part of the EIA, major boundary alternatives considered. Generalized maps of the management boundaries and of excluded Federal lands, if provided, are recommended for inclusion in this section (or if more easily handled as a separate appendix, their location in the appendix should be indicated in this section).

(ii) Uses Subject to Management—The requirements of subsections 305(b)(2), 305(b)(8) and 306(e)(2) of the Act and related sections 923.11-923.14, and 923.43 of these regulations should be addressed in terms of the process used to determine uses subject to the management program and how these uses will be managed.

(iii) Special Management Areas—The requirements of subsections 305(b)(3), 305(b)(5), 305(b)(7), 305(b)(9), and 306(c)(9) and the associated requirements of Subpart C of these regulations should be addressed. States are encouraged to include generalized maps locating designated Areas of Particular Concern.

(iv) Authorities and Organization—The requirements of subsections 305(b)(4), 305(b)(6), 306(c)(5)-306(c)(7), 306(d), 306(e) and 307(f) of the Act and the associated requirements of Subpart E of these regulations should be addressed through a narrative synopsis of the administrative and legal bases that will be used to implement and insure enforcement of and compliance with the policies and the use and area determinations of the management program. This section should include, as applicable, discussion of six types of legal authorities: State legislation, State agency regulations, gubernatorial executive orders, interagency agreements, significant judicial decisions and significant constitutional provisions. With respect to the organizational structure that will be used to implement the management program, this section should include a discussion of the roles and responsibilities during the program implementation of the State agency designated pursuant to subsection 306(c)(5) of the Act and of other State, local or regional agencies that will be involved in carrying out the management program. The relationship of the designated State agency to these other agencies also should be described.

(v) Consultation, Participation and National Interests—The requirements of subsections 306(c)(1)-306(c)(3), 306(c)(8) and 307(b) of the Act and the related requirements of Subpart F of these regulations should be addressed. Included herein should be a summary of consultation efforts with relevant Federal and State agencies, local governments, regional, areawide and/or interstate entities. A summary of public information and participation during program development should be included, including an indication of where and when required public hearings were held and a brief summary of those hearings. Also included herein should be discussions of national interest considerations; what procedures the State will use to implement the Federal consistency provisions of the Act; and what mechanisms will be used to insure continued governmental consultation and public participation after program approval. Detailed documentation regarding a number of the requirements addressed in this section can be reserved for appendices.

(vi) Miscellaneous—Normally, States will address the requirements of subsection 306(c)(4) and related § 923.41 in the gubernatorial transmittal that will accompany the program submission. For a segment submission, the same format should be used. All the requirements of the Act and these regulations apply unless otherwise noted in § 923.61. Segment submissions must also address the requirements of subsection 306(h) of the Act and the associated requirements of § 923.61.

§ 923.72 Review/approval procedures.

(a) Upon submission by a State of its draft management program, OCZM and NOAA will review the document to determine if it adequately meets the requirements of the Act and these regulations. These reviews normally will take three weeks or longer. Assuming positive findings are made and major revisions to the State's draft management program are not required, OCZM will prepare a Draft Environmental Impact Statement (DEIS). (If major revisions are necessary, this initial review period will extend beyond three weeks.) The DEIS will incorporate the State's program document. This combined document, hereinafter referred to as the DEIS, will be distributed to principally affected Federal agencies, State, local and regional agencies, national interest groups and to interested individuals. Preparation of the DEIS, printing of the document, delivery to EPA, and publication in the FEDERAL REGISTER of notice of availability of the DEIS and notice of date and location of public hearing on the DEIS normally will take 45 days. Since States normally will be responsible for printing the DEIS, the time involved will vary depending on State printing capabilities.

(b) From the time of notice of availability in the FEDERAL REGISTER of the DEIS, each Federal agency, other person or entity normally has 45 days pursuant to CEQ guidelines to provide comments, if any, on the management program and/or on the DEIS to the Assistant Administrator. During this time period, a public hearing will be held in one or more locations in the coastal State whose program is under review. At least fifteen (15) days notice, pursuant to CEQ guidelines and the Administrative Procedure Act, will be provided, including announcement of availability of the DEIS. Following the public hearing(s), the comment period normally will remain open for fifteen days.

(c) Following the close of the DEIS comment period, the Assistant Administrator will review and evaluate comments received, in keeping with the requirement of subsection 307(b) of the Act, that a State's management program not be approved unless the views of principally affected Federal agencies have been adequately considered, and in keeping with the requirements of the National Environmental Policy Act (NEPA). Preparation of response to comments, revisions to the State's management program (if appropriate), submission of a final program, and preparation and printing of a Final Environmental Impact Statement (FEIS) normally will take a minimum of three months. Factors that will vary this time frame are: the nature of comments received on the DEIS, the nature and extent of revisions necessary to the management program, and State capabilities with respect to printing the FEIS (since States normally also will be responsible for printing the FEIS).

(d) Notice of the availability of the FEIS will be published in the FEDERAL REGISTER. The Assistant Administrator shall send a copy of such statement to each Federal agency or other person or entity which received a copy of the DEIS and to any additional persons who request a copy of the FEIS.

(e) The Assistant Administrator will review and evaluate any comments received during the thirty day review in keeping with the requirements of subsection 307(b) of the Act. The Assistant Administrator shall then approve or disapprove a State's management program. In the event of approval, the Assistant Administrator shall prepare a set of findings with respect to the requirements of the Act. These findings shall be available upon request. Notice of availability of these findings shall be published in the FEDERAL REGISTER. Principally affected Federal agencies will be sent a copy of the findings as a matter of course.

(f) In the event review of comments on the FEIS leads to a decision by the Assistant Administrator not to approve the management program, the Assistant Administrator shall so advise the State in writing, including the reasons therefor. Notice of this decision also will be published in the FEDERAL REGISTER.

§ 923.73 Miscellaneous.

(a) The timelines laid out in § 923.72 may be shortened if any of the following occur:

(1) Reduction of the time allotted to review environmental impact statements is proposed consistent with applicable procedures and guidelines and concurrence is requested from the Council on Environmental Quality. Reductions in review time normally are limited to emergency circumstances or conditions which would result in impaired program effectiveness; or

(2) A draft environmental impact statement has been issued in connection with preliminary approval pursuant to subsection 305(d) of the Act (see § 923.74 et seq.) and a supplementary or final impact statement is all that is necessary for full approval pursuant to subsection 306(a) of the Act; or

(3) In the case of segmented programs only, a determination is made that the proposed segment management program will not significantly affect the environment. In such cases a negative declaration will be prepared. The program submission still shall shall be sent to principally affected Federal agencies for their review and comment.

(b) The Assistant Administrator shall follow the procedures of § 923.72 in reviewing for approval any amendments or modifications to an approved management program submitted by a State. (See Subpart I for details on amendment procedures.)

§ 923.74 Preliminary approval.

(a) The basic purpose of preliminary approval is to allow a State additional time to implement fully a coastal management program which, in its design and description, meets the requirements of section 306 of the Act. In granting preliminary approval, recognition is given to the need to include, in a subsection 305(d) work program, those deficiencies precluding section 306 approval, the specifics for remedying those deficiencies, and a timetable within which this is to occur.

(b) Another objective is to provide funding to support initial implementation of selected elements of a State's coastal management program, provided that the overall design and description of the program meets the section 306 requirements. For selected elements to be initially implemented, necessary section 306 legal authorities and administrative capabilities must be in place.

(c) A third objective is to provide a State with additional time to resolve problems, uncovered during DEIS review of a program submitted for section 306 approval, when such problems would preclude full approval.

(d) The following are examples of situations under which States may apply for preliminary approval:

(1) A State may be able to describe the legislative authority it needs in order to meet the requirements under section 306 to have an approvable program, and to draft a bill carrying this out, but not be able to enact same within the time period provided pursuant to subsection 305(c). This could be because the legislature meets only every two years, or because the process is too complicated to accomplish in a matter of months.

(2) A State program may call on local units of government to prepare their own coastal plans in accordance with State guidelines. However, one or even two years may be required for these units to carry out their work. Under this example, it should be noted that, depending on the nature of the State-local relationships and existing legal authorities, this activity also can be accomplished as part of a State's subsection 305(c) program development grant or as part of a section 306 program administrative grant. (See § 923.42(c)(4) for a discussion of when this activity can be performed as part of a section 306 administrative grant.)

(3) A State may need to reorganize within the Executive branch before a program can gain approval and funding under section 306.

(4) A State may be encountering problems resolving differences with one or a number of Federal agencies with respect to specific aspects of its coastal management program.

(e) Preliminary approval is not seen as a necessary continuum from section 305 to section 306 status. States may move directly from subsection 305(c) (program development) grants to section 306 (program implementation) grants. Progression from subsection 305(c) status to subsection 305(d) (preliminary approval) status is not automatic, nor is progression from preliminary approval status to section 306 status automatic. Application for preliminary approval requires consultation with the Assistant Administrator to insure that the State meets the eligibility conditions and approval criteria.

(f) Preliminary approval is meant to apply to a fully described coastal management program for a State's entire coastal zone. Accordingly, segments are not eligible for approval pursuant to this subsection but shall continue to be considered under provisions of section 306 of the Act and related requirements of these regulations dealing specifically with segmentation.

§ 923.75 Eligibility for consideration.

(a) *Requirement.* In order to be eligible for consideration for preliminary approval, pursuant to subsection 305(d), a State must be in one of the following situations:

(1) All subsection 305(c) program development grants have been expended and the State can describe a program that meets the basic approval criteria but there are still aspects of the program which must be instituted before suction 306 approval can be given; or

(2) At any time during section 305 program development when a State has elements of its coastal management program to implement and meets the basic approval requirement (that the overall program as described would be approvable when fully implemented); or

(3) During the course of section 306 review, problems are uncovered that preclude section 306 approval but do not preclude preliminary approval.

§ 923.76 Criteria for preliminary approval.

(a) *Requirement.* For a State's coastal management program to receive preliminary approval pursuant to subsection 305(d)(2) of the Act, the State must demonstrate that:

(1) The management program fulfills the requirements of section 305(b) of the Act and §§ 923.11, 923.12, 923.21–923.23, 923.41, and 923.45 of these regulations;

(2) Deficiencies that prohibit achievement of section 306 program approval are identified, after consultation with the Assistant Administrator, and the means and timetable for remedying these deficiencies are specified;

(3) The purposes for which the subsection 305(d) grant are to be used are specified;

(4) Adequate steps have been or are being taken to meet the requirements under section 306 or 307 of the Act, which involve Federal officials or agencies;

(5) The program as described and proposed for implementation would be fully approvable when submitted for section 306 approval; and

(6) For those elements to be implemented under subsection 305(d), the necessary legal authorities and organizational structures are adequate and in place.

(b) *Comment.* (1) Pursuant to subsection 305(d)(2)(A) of the Act, "(a) coastal state is eligible to receive grants under this subsection if it has * * * (d)eveloped a management program which * * * (i) is in compliance with rules and regulations promulgated to carry out subsection (b), but (ii) has not yet been approved by the Secretary under section 306." The rules and regulations referred to above are contained in Subparts A–F of these regulations.

(2) Pursuant to paragraph 305(d)(2)(B) of the Act, "(a) coastal State is eligible to receive grants under this subsection if it has * * * (s)pecifically identified, after consultation with the Secretary, any deficiency in such program which makes it ineligible for approval * * * (p)ursuant to section 306, and has established a reasonable time schedule during which it can remedy any such deficiency." The only deficiencies that a State may remedy after preliminary approval are those that relate to implementing capability. In other words, an acceptable subsection 305(d) program can be deficient only in its lack of having translated fully described but pending implementing actions into accomplished fact. Deficiencies bearing on the adequacy of program design, description, or implementation strategy cannot be addressed as part of a subsection 305(d) program but rather should continue to be addressed as part of the basic subsection 305(c) program development process. To meet the requirements of subsection 305(d)(2)(B) of the Act, States should describe the nature of the deficiency, the reason for it, and the specific means and timetable by which the deficiency shall be overcome. The schedule for remedying deficiencies should be sufficiently long to be realistic, given the nature and number of deficiencies and the particulars of a State's situation. At the same time it should be sufficiently tight to insure an enhanced and expeditious State effort. In no case shall the timetable for remedying section 306 deficiencies extend beyond fiscal year 1980.

(3) Pursuant to subsection 305(d)(2)(C) of the Act, "(a) coastal State is eligible to receive grants under this subsection if it has * * * (s)pecified the purposes for which grants shall be used."

(i) In specifying the purposes for which grants shall be used, States are advised that the following represent allowable subsection 305(d) costs:

(A) Resolving section 306 deficiencies;

(B) Meeting the new planning requirements of subsections 305(b) (7), (8), and (9);

(C) Implementing those portions of a State's coastal management program for which sufficient authorities and organizational structures are in place; and

(D) Updating coastal management programs if this updating would be an allowable cost after section 306 approval.

(ii) Examples of fundable items to remedy section 306 deficiencies include, but are not limited to:

(A) Pass-throughs to local or regional units of government to develop master programs and/or local ordinances conforming to State guidelines;

(B) Efforts necessary to enact or refine needed legislation;

(C) Federal coordination efforts, including establishment of procedures for determining Federal consistency once a coastal management program is fully approved under section 306; and

(D) Negotiation of memoranda of understanding and instituting other arrangements for interactions among State agencies.

(iii) Examples of fundable items to meet the new planning requirements include:

(A) Development of a shorefront access and protection planning process;

(B) Development of an energy facility planning process; and

(C) Development of a shoreline erosion/mitigation planning process.

(iv) Examples of fundable items to initiate implementation of selected aspects of a State's coastal management program include, but are not limited to:

(A) Personnel or equipment necessary to administer approved permit and other authorities;

(B) Signs, publications, etc., relative to approved management practices; and

(C) General maintenance/resource management activities.

(v) Example of fundable items for updating the management program include, but are not limited to:

(A) Site-specific studies on appropriate management techniques for areas for preservation or restoration;

(B) Opinion surveys to determine public understanding or acceptance of various elements of the management program;

(C) Studies of ways to improve intergovernmental coordination techniques approved as part of the management program.

(4) Pursuant to subsection 305(d)(2)(D) of the Act, "(a) coastal State is eligible to receive grants under this subsection if it has * * * (t)aken or is taking adequate steps to meet any requirement under section 306 or 307 which involves any Federal official or agency." For purposes of this paragraph, the particular sections of 306 and 307 are:

(i) Subsection 306(a)(1)—identification of excluded Federal lands;

(ii) Subsection 306(c)(1)—opportunity for full participation by relevant Federal agencies. This shall include advising Federal agencies (especially at the regional level) of the State's intent to apply for preliminary approval;

(iii) Subsection 306(c)(8)—adequate consideration of the national interest involved in planning for, and in the siting of, facilities necessary to meet requirements which are other than local in nature;

(iv) Subsection 307(c)—development of procedures for certifying Federal consistency with respect to Federal activities or development projects, and with respect to activities subject to Federal licenses or permits;

(v) Subsection 307(d)—development of procedures for certifying Federal consistency with respect to Federal assistance to State and local governments; and

(vi) Subsection 307(h)(1)—participation in mediation procedures, if appropriate.

(5) Pursuant to subsection 305(d)(2)(E) of the Act, "(a) coastal State is eligible to receive grants under this subsection if it has * * * (c)omplied with any other requirement which the Secretary, by rules and regulations, prescribes as being necessary and appropriate to carry out the purposes of this subsection." By virtue of these rules and regulations, the following are prescribed as necessary and appropriate for States to complete in order to merit preliminary approval under this paragraph:

(i) A description of the overall management program of sufficient detail and addressing all section 306 findings to allow a determination that, when implemented, these elements will constitute an approvable section 306 management program.

(ii) For those aspects to be implemented under subsection 305(d), a demonstration that the legal authorities and organizational capability necessary for implementation exist at time of preliminary approval.

(iii) An Environmental Impact Assessment (EIA), with particular emphasis on those elements, if any, which will be funded for implementation purposes pursuant to subsection 305(d).

§ 923.77 Preliminary approval review/approval procedures.

(a) States interested in preliminary approval should consult with the Assistant Administrator well in advance of the point at which they would like to receive such approval. As a general rule, such consultation should begin six months before approval is desired. The purpose of this consultation is to determine:

(1) If the program will be sufficiently developed, designed and described to warrant consideration for preliminary approval at the time desired;

(2) If there are any elements of the State's management program eligible for implementation funding as part of preliminary approval;

(3) The content and detail of the EIA which must accompany the State's preliminary approval submission; and

(4) If an EIS will be necessary prior to granting preliminary approval.

If the Assistant Administrator indicates that the program appears to meet the subsection 305(d) approval criteria, and if a determination is made that an EIS will not be necessary prior to preliminary approval, States should plan on submitting the subsection 305(d) program document, including an EIA, two to three months prior to the desired date of approval. If the Assistant Administrator determines an EIS will be necessary prior to granting preliminary approval, States should plan on submitting the program document, including the EIA, shortly after this determination is made. The EIS procedures discussed in § 923.72 then will be followed. The subsection 305(d) program document should follow the general format recommended by OCZM in § 923.71. In addition, the information required by § 923.76 (b)(2) and (b)(3) with respect to describing deficiencies, timetable for remedying, and purposes for which the grant will be used must be included. The application for grant funds and the accompanying work program is a separate document that may be submitted in conjunction with or subsequent to submission of the subsection 305(d) program document. The requirements for the grant application are contained in Subpart J, § 923.99.

(b) Upon submission by a State of a subsection 305(d) program document, the Assistant Administrator shall review the document for compliance with the approval criteria contained in § 923.76. If a State meets the approval criteria, the Assistant Administrator may award a subsection 305(d) grant and will issue a set of findings with respect to deficiencies and the timetable for their resolution.

(c) Copies of the subsection 305(d) program document and the Assistant Administrator's findings of deficiencies will be distributed to relevant Federal agencies.

(d) If a State applies for preliminary approval after formal section 306 program review has begun, preliminary approval will be issued at that point in the section 306 review process when the DEIS review reveals problems that preclude full program approval and implementation but do not preclude preliminary approval. States will be required to take into consideration those items raised by the DEIS reviews as part of the subsection 305(d) work program.

Subpart I—Changes to Approved Management Programs

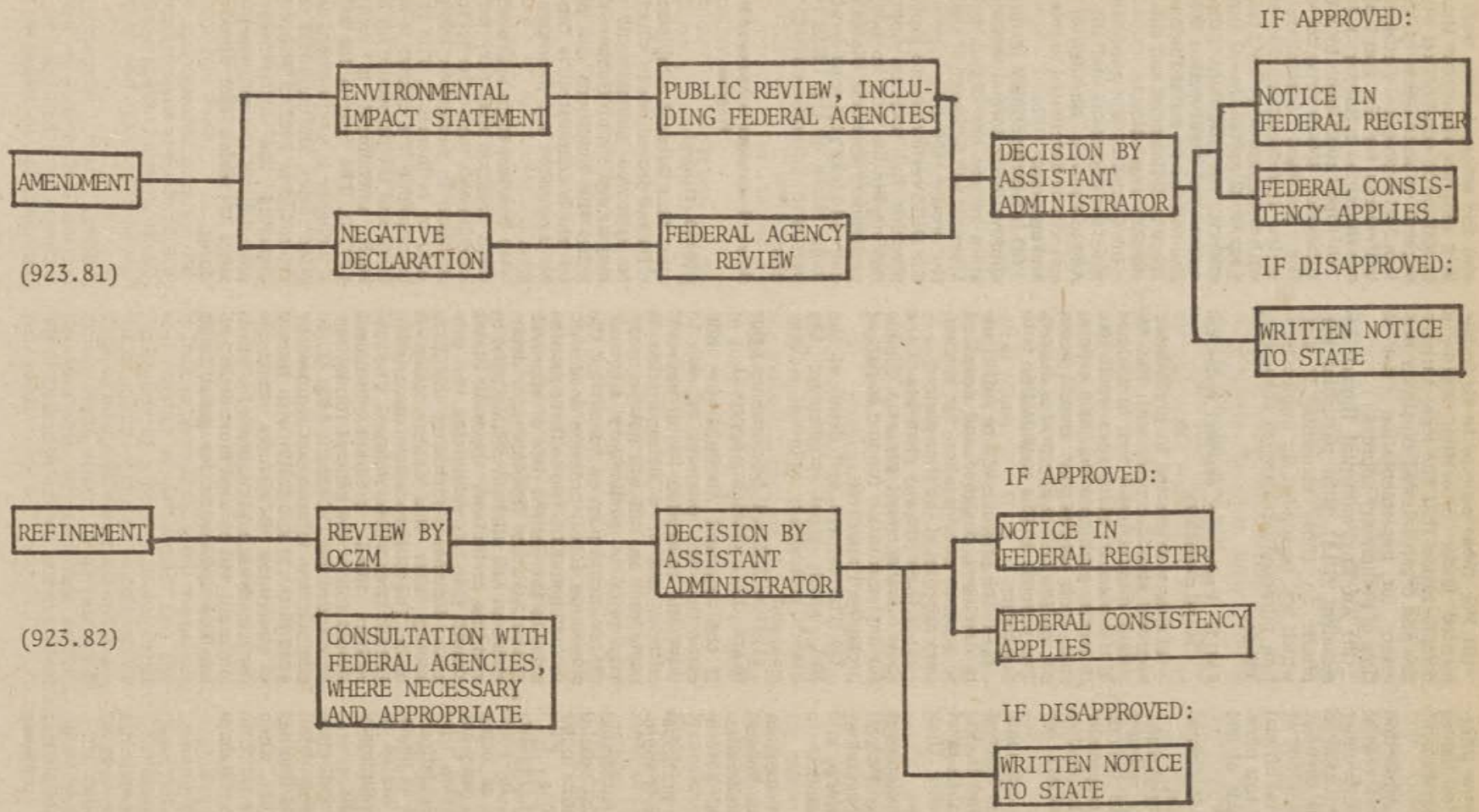
§ 923.80 General.

(a) This Subpart establishes the criteria and procedures by which changes to approved management programs may be made. This Subpart also establishes the conditions and procedures by which administrative funding may be terminated for programmatic reasons.

(b) Changes to an approved management program may take the form of amendments (also referred to as modifications in subsection 306(g) of the Act) or refinements. The criteria for determining if a change is an amendment and the procedure for processing such amendment is contained in § 923.81. The criteria for determining if a change is a refinement and the related review and approval procedures are found in § 923.82. Below is a chart depicting the differences between amendments and refinements with respect to review and approval procedures.

CHART

PROCEDURES FOR CHANGES TO APPROVED MANAGEMENT PROGRAMS



(c) An illustrative list is provided below of potential program changes. It does not distinguish between amendments and refinements. This distinction is to be made on the basis of the criteria contained in §§ 923.81 and 923.82 respectively.

LIST OF POTENTIAL PROGRAM CHANGES

New or Revised Legislation

Examples:
- New powerplant siting authority
- Revised wetlands law
- Amended flood control authority
- New law authorizing acquisition of coastal lands

New or Revised State Agency Regulations

Examples:
- Regulations to implement sand mining legislation
- Revisions to shoreland regulations changing permissible use districts, conditional uses and/or management techniques
- Revision of dredge and fill permit regulations

New or Revised Local Implementation Programs, Ordinances or Other Regulations Pursuant to State Policies, Criteria or Standards

Examples:
- Local management certified programs to be in conformance with State standards and criteria
- New or revised shoreland ordinances
- New or revised soil erosion ordinances
- New or revised flood control zones

Additions, Deletions or Revisions to Designated Areas of Particular Concern (APCs) or Areas for Preservation or Restoration (APRs)

Examples:
- New designations of APCs pursuant to a State's Critical Areas Act
- Revisions to designated hazard areas or shoreline environmental areas pursuant to a State's Shoreline Management Act
- New designation of a port area for redevelopment pursuant to APC procedures in a State's management program

Changes to Enforceable Policies (by other than legislation or regulations as discussed in (1) and (2) above)

Example:
- New executive order on floodplains management

Changes in Organizational Arrangements

Examples:
- Modification of the list of uses of regional benefit or the methods to assure local regulations do not unreasonably restrict or exclude such uses
- Changes in State-local consultation procedures required pursuant to subsection 306(c)(2)(B) of the Act
- Changes in procedures for considering national interests

(d) The lead State agency, designated pursuant to subsection 306(c)(5) of the Act, has the responsibility for notifying the Assistant Administrator of proposed changes and requesting approval of such changes. Such request(s) may be made annually at the time of reapplication for administrative funding or on an as-occurring basis. Action to implement a change prior to its acceptance by the Assistant Administrator as part of the State's management program may result in a finding that the State has not adhered to its management program and is not justified in deviating from it. (See § 923.83(b)(1)(ii).) Federal consistency does not apply until the change is approved by the Assistant Administrator. Use of administrative funds to implement work tasks associated with a proposed change, before approval by the Assistant Administrator, may be disallowed upon audit of the program. States are encouraged to use their performance reports to inform the Assistant Administrator in a timely manner of potential changes to the management program.

(e) The lead State agency has the initial responsibility of determining whether proposed changes represent amendments or refinements. The assistant Administrator will review this determination to see if it conforms to the criteria of §§ 923.81 and 923.82 respectively. States are encouraged to consult with OCZM in advance of a formal request for change(s) to ascertain if their determination is correct.

§ 923.81 Amendments or modifications to approved management programs.

(a) Amendments (or modifications) to approved management programs may be justified if they are in response to changes in coastal zone needs, problems, issues, priorities, social or political expectations, or other factors bearing on the relevancy and viability of a State's coastal management program, provided that such amendments/modifications are consistent with the findings and policies of section 302 and 303 of the Act and with the requirements of section 306 of the Act.

(b) Amendments or modifications will represent one of these types of changes to the management program:

(1) Changes in basic program goals, objectives or policies;

(2) Changes in techniques (for achieving goals, objectives or policies) that result in an environmental impact significantly different from previously approved techniques; or

(3) Changes in techniques (for achieving goals, objectives or policies) that result in significantly altered intergovernmental relationships not reviewed by and concurred with by affected agencies or units of government at the time of proposed modification.

(c) *Amendment procedures.* Prior to formal submission of an amendment, the State shall inform the public as well as affected parties of the proposed change in order to determine the degree and nature of public interest. Following evaluation of public and private reactions, if a State decides to proceed with a request for a program amendment, it shall submit the following to the Assistant Administrator:

(1) A written request from the Governor for the amendment or the head of the lead State agency designated pursuant to subsection 306(c)(5) of the Act;

(2) A description of the proposed change;

(3) Justification for the change in terms of the factors noted in (a) above;

(4) Evidence of public notice and a discussion of the degree and nature of public interest; and

(5) An environmental impact assessment or a determination that the proposed amendment will not have significantly different environmental impacts from the already approved management program.

The Assistant Administrator then shall review the requested change pursuant to the requirements of subsection 306(g) of the Act. Pursuant to this section, amendments to approved management programs are to be reviewed and approved according to the same procedures utilized for initial management program approvals. The specifics of these procedures are contained in Subpart H. The Assistant Administrator will make a case-by-case determination as to the necessity of issuing an Environmental Impact Statement (EIS) prior to approving any amendments or modifications.

In the event an EIS is appropriate, which will be the case when changes described in (b)(2) above are proposed, the review/approval procedures described in § 923.72 will be followed. In the event a determination is made that an EIS is not required, as may be the case when changes described in (b)(3) above are proposed, the Assistant Administrator will send a copy of the proposed amendment(s) to relevant Federal agencies for their review and comment. Federal agencies normally will have at least forty-five (45) days for review and comment. The Assistant Administrator will consider these comments before making a final decision on whether or not to approve the requested amendment. Whichever review/approval procedure is followed, notice of a decision by the Assistant Administrator will be published in the FEDERAL REGISTER. In the event an amendment request is not approved, the Assistant Administrator will so advise the State in writing, including the reasons therefore.

(d) *Comment.* Statutory Citation, Subsection 306(g):

Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary, under this section, pursuant to the required procedures described in subsection (c).

(e) Federal consistency, as provided for in section 307 of the Act, shall not apply to proposed amendments unless

and until such amendments are approved, pursuant to the procedures in Subpart H, and are thereby incorporated as part of the approved management program.

(f) In cases where an amendment relates to an already approved program goal, objective, policy, authority or other technique and the State acts to implement that amendment prior to approval by the Assistant Administrator, such action may represent cause for notification by the Grants Officer of intent to terminate and withdraw financial assistance pursuant to § 923.83. In cases where an amendment relates to a new goal, objective, policy or authority not previously contained in a State's approved coastal management program, the State may initiate implementation of such amendment provided it does not conflict with or contradict any existing approved management program goal, objective, policy or authority and with the understanding that section 306 funding for and Federal consistency relative to that amendment are not available unless and until approval is conferred.

(g) State management programs that have been or will be approved, pursuant to section 306 of the Act, prior to October 1, 1978, without meeting the requirements of subsection 305(b) (7), (8) and (9) and related §§ 923.14, 923.25 and 923.26 of these regulations will need to be amended to incorporate these three planning requirements into their approved management programs.

§ 923.82 Refinements to approved management programs.

(a) It is recognized that a coastal management program is a dynamic process that will change over time in response to changing needs and conditions. Not all these changes will be of such a major nature to require an amendment. Accordingly, States may make minor refinements to their management programs without following the formal amendment procedures specified in § 923.81 and Subpart H. Such refinements may be made following consultation with and approval by the Assistant Administrator.

(b) Refinements are changes relating to programs or techniques for attaining particular goals and objectives or for implementing particular policies (but not changes in these goals, objectives or policies themselves). In addition, these refinements will not have an environmental impact significantly different from previously approved programs or techniques and will not significantly alter previously approved intergovernmental arrangements with other State agencies, local governments and/or Federal agencies, unless the affected agencies/units of government and the Assistant Administrator concur in these alterations.

(c) States shall use the following procedure in making refinements to their management programs:

(1) States shall consult with the Assistant Administrator prior to proceeding with a formal request for a refinement to determine that the change represents a refinement rather than an amendment and that the change is both reasonable and justifiable.

(2) Upon such a determination, the State shall submit a written request from the head of the designated State agency which shall contain:

(i) A description of the proposed change;

(ii) Justification for the change;

(iii) Indication that the public and affected parties have been informed of the proposed change and a discussion of their reactions; and

(iv) A determination that the proposed change will not have environmental impacts significantly different from the already approved management program.

(v) a determination that the proposed refinement will not significantly alter previously approved intergovernmental relationships or, if there are changes in these relationships, that these have been concurred with by the affected governmental entities or legislatively mandated.

Upon receipt of the formal request for a refinement, the Assistant Administrator will evaluate the supporting materials submitted along with the request. If appropriate in the opinion of the Assistant Administrator, he/she will consult with relevant Federal agencies or other interested parties. Notice of the Assistant Administrator's decision will be published in the FEDERAL REGISTER. Copies of the refinement will be sent to relevant Federal agencies as a matter of course and to other parties upon request. If the Assistant Administrator disapproves the request, the State shall be notified in writing including the reasons therefor.

§ 923.83 Termination and withdrawal of administrative funding.

(a) In addition to the provisions contained in OMB Circular A-102 relating to termination and withdrawal of funding awarded pursuant to a grant award, the Assistant Administrator may recommend to the NOAA Grants Office that section 306 grant funding be terminated and withdrawn if the Assistant Administrator determines that:

(1) A State has failed or is failing to adhere to and was or is not justified in deviating from its approved management program; and

(2) That State has been provided notice of intent to terminate and withdraw funding; and

(3) That State has been provided an opportunity to demonstrate adherence, or justification for program alteration or modification.

(b) *Comment.* Statutory Citation, Subsection 312(b):

> The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

(1) Situations which may lead to notice of intent to terminate and withdraw funding include:

(i) In evaluating a State's performance as part of the continuing review function pursuant to section 312 of the Act, the Assistant Administrator determines that the State has not adhered to its management program approved pursuant to section 306 of the Act, and such lack of adherence is not justified; or

(ii) In going through the amendment process where the amendment relates to a previously approved program goal, objective, policy, authority or other technique, a State acts to implement that amendment prior to approval by the Assistant Administrator.

(2) In the event there is cause for terminating and withdrawing section 306 funding, notice in the form of written documents from the Assistant Administrator and the NOAA Grants Officer to the Governor of the State in question or the head of the designated State agency shall be provided advising of the intent to terminate an approved grant and to withdraw any unexpected portions of funding assistance. Included in this notice will be the reasons for the proposed termination and withdrawal of funds as well as notice of opportunity for the State to present evidence of adherence or justification for alteration or refinement of its program. Such opportunity to present evidence as referred to in subsection 312(b) of the Act shall consist of a thirty day period, commencing on a receipt of notice, within which the State may respond by providing written materials demonstrating adherence to or justification for refining or modifying its program. Within this thirty day period, a State may request additional time beyond the thirty day period to present evidence of adherence or justification for alteration or refinement. Such additional time shall not extend beyond a subsequent thirty days from the termination of the first thirty day period. In total then, a State may have a maximum of sixty days, from receipt of notice, in which to respond. Following receipt and evaluation of a State's evidence with respect to adherence or

justification for alteration, a final determination shall be made by NOAA with respect to termination and withdrawal of funding assistance. If termination and withdrawal of funding is deemed appropriate, the NOAA Grants Office shall take appropriate action to terminate or withdraw funds. If funding is terminated and withdrawn pursuant to this section, notice shall be placed in the FEDERAL REGISTER. Once funding is terminated and withdrawn pursuant to this section, Federal consistency pursuant to section 307 of the Act shall cease to apply to that State's program.

Subpart J—Applications for Program Development or Implementation Grants

§ 923.90 General.

(a) The primary purpose of development grants made pursuant to section 305 of the Act is to assist coastal States in the development of comprehensive coastal management programs that can be approved by the Assistant Administrator. The primary purpose of implementation grants made pursuant to section 306 of the Act is to assist coastal States in implementing coastal management programs following their approval by the Assistant Administrator. The purpose of the guidelines in this subpart J is to define the procedures by which grantees apply for and administer grants under the Act. These guidelines shall be used and interpreted in conjunction with the Grants Management Manual under the Coastal Zone Management Act, hereinafter referred to as the "Manual."

(b) The Manual incorporates a wide range of Federal requirements, including those of the Office of Management and Budget, the General Services Administration, the Department of the Treasury, the General Accounting Office and the Department of Commerce. In addition to specific policy requirements of these agencies, the Manual includes recommended policies and procedures for grantees to use in submitting a grant application.

(c) Grants awarded to a State must be expended for the development or administration, as appropriate, of a management program that meets the requirements of the Act.

(d) Grants shall not exceed eighty per cent of the annual total cost of the program.

(e) For purposes of this subpart, the term "development grant" means a grant awarded pursuant to subsection 305(a) of the Act. "Administrative grant" and "implementation grant" are used interchangeably and mean grants awarded pursuant to subsections 306 (a) or (h) of the Act.

§ 923.91 Administration of the program.

The Congress assigned the responsibility for the administration of the Act to the Secretary of Commerce who has designated NOAA to manage the program. NOAA has established the Office of Coastal Zone Management for this purpose. All application and preapplication forms are to be requested from and submitted to:

National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, Grants and Loans, Operations Staff, 3300 Whitehaven Street NW., Washington, D.C. 20235.

§ 923.92 State responsibility.

(a) Applications for program administrative grants shall be submitted by the Governor of a participating State or by the head of the State agency or entity designated by the Governor pursuant to subsection 306(c)(5) of the Act.

(b) In the case of a section 305 grant, the application shall designate a single State official, agency or entity to receive development grants and to be responsible for development of the State's coastal management program. The designee need not be that agency designated by the Governor pursuant to subsection 306(c)(5) of the Act as the single agency to receive and administer implementation grants.

(c) One State application will cover all program activities for which funds under this Act and matching State funds are provided, irrespective of whether these activities will be carried out by State agencies, areawide or regional agencies, local governments, or interstate entities.

(d) The designated State entity is fiscally responsible for all expenditures made under the grant, including expenditures by subgrantees and contractors.

§ 923.93 Allocation.

(a) A State may allocate a portion or portions of its grant to other State agencies, local governments, areawide or regional agencies, interstate entities, or Indian tribes if the work to result from such allocation(s) contributes to the effective development or implementation of the State's management program.

(b) *Local governments.* Should a State desire to allocate a portion of its development grant to a local government, pursuant to the provisions of subsection 305(g) of the Act, units of general-purpose local government are preferred over special-purpose units of local government, pursuant to section 402 of the Intergovernmental Cooperation Act of 1968.

(c) *Local governments.* Where a State will be relying on direct State controls as provided for in subsection 306(e)(1)(B) of the Act, pass-throughs to local governments for local planning, regulatory or administrative efforts under a section 306 grant cannot be made, unless they are subject to adequate State overview and are part of the approved management program. Where the approved management program provides for specified local activities or one-time projects, again subject to adequate State overview, then a proportional amount of administrative grant funds can be allocated to local governments.

(d) *Areawide agencies.* If a State wishes, it may allocate a portion of its administrative grant to an areawide agency, and absent State law to the contrary, preference shall be given to those agencies recognized or designated as areawide comprehensive planning or development agencies under the provisions of the Office of Management and Budget Circular No. A-95, under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(e) *Indian Tribes.* In furtherance of the policy enunciated in § 923.33(e), individual tribes or groups of tribes may be considered regional agencies and may be allocated a portion of a State's grant in the form of a contract or subgrant for the development of independent tribal coastal management programs or the implementation of specific management projects provided that:

(1) The State certifies that such tribal programs or projects are compatible with its approved coastal management policies; and

(2) On excluded tribal lands, the State demonstrates that the tribal program or project would or could directly affect the State's coastal zone.

(f) *Comment.* Statutory Citation, Subsection 305(g):

With the approval of the Secretary, any coastal state may allocate to any local government, to any areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, to any regional agency, or to any interstate agency, a portion of any grant received by it under this section for the purpose of carrying out the provisions of this section.

(g) *Comment.* Statutory Citation, Subsection 306(f):

With the approval of the Secretary, a state may allocate to a local government, an areawide agency designated under section 204 Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section: Provided, that such allocation shall not relieve the state of the responsibility of ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

§ 923.94 Geographic segments.

(a) Application procedures for a grant to be awarded pursuant to subsection 306(h) of the Act for a geographic segment of a State's coastal zone are the same as those set forth in this subpart for a grant to administer

the approved management program of the entire coastal zone of a State.

(b) When a State has a program for a geographic segment of its coastal zone approved pursuant to subsection 306(h) of the Act, that portion of a State's coastal zone not awarded segment approval will continue to be eligible for section 305 grants until authorization for such funds terminates.

§ 923.95 Eligible implementation costs.

(a) Costs claimed must be beneficial and necessary to the objectives of the grant project. As used herein the terms cost and grant project pertain to both the Federal and the matching share. Allowability of costs will be determined in accordance with the provisions of Federal Management Circular (FMC) 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments.

(b) Federal funds awarded pursuant to section 306 of the Act may not be used for land acquisition purposes and may not be used for construction purposes except as described in paragraph (e) below.

(c) The primary purpose for which implementation funds, pursuant to section 306 of the Act, are to be used is to assure effective implementation and administration of the management program, including especially administrative actions to carry out and enforce program policies, authorities and other management techniques.

(d) Additional purposes to which States are encouraged to apply implementation funding are those that resolve coastal problems and issues in which there are national interests including fisheries management, reduction of losses due to coastal hazards, protection of natural resources, siting of energy facilities, provision of access to and use of the shorefront and urban waterfronts.

(e) Still other purposes to which implementation funding may be applied include the management of designated areas of particular concern, especially areas designated for preservation or restoration purposes, consistent with the national policies of the Act and the policies in a State's management program. Preservation and restoration projects involving expendable materials (as for example, seeds to be used as a non-structural erosion control technique or, for another example, materials to restore lighthouses designated as areas for restoration) may be funded for areas designated for preservation or restoration pursuant to §§ 923.21 or 923.24. All costs associated with such projects may not exceed a total of $50,000 per grant, except in the case of a demonstration grant which may be negotiated with and approved by the Assistant Administrator. In addition the following conditions must be met:

(1) The project must be consistent with and fulfill the objectives of a related policy (or policies) in the State's management program;

(2) Basic program administration requirements discussed in paragraph (c) are provided for;

(3) No other sources of funding are readily available; and

(4) An explanation is provided of how the area will be maintained and operated once preserved or restored.

(f) Section 306 funding in support of any of these purposes, except as limited in paragraph (e) above, may be used to fund:

(1) Personnel costs,

(2) Supplies and overhead,

(3) Equipment (subject to the limitations in paragraph (g) below), and

(4) Feasibility studies and preliminary engineering reports. A feasibility study is defined as a document, independent of a particular design solution for a project, which presents an analysis of the economic praticality of the project. A preliminary engineering report is defined as a document which presents both engineering criteria, in sufficient detail to form the basis for the preparation of final design documents and detailed engineering cost estimates. Detailed architectural drawings and engineering specifications are not eligible costs unless directly related to preservation and restoration projects discussed in (e) above.

(g) Equipment purchases of more than one thousand (1,000) dollars per item require NOAA approval prior to purchase. Such purchases may be deemed eligible costs if the State:

(1) Has examined lease, rental or other non-purchase alternatives and purchase represents an equal or lesser cost alternative, and

(2) The equipment is essential to management activities that are anticipated to continue for more than 1 year.

(h) States are encouraged to coordinate administrative funding requests with funding possibilities pursuant to sections 308, 309, 310 and 315 of the Act. When in doubt as to the appropriate section of the Act under which to request finding, States should consult with OCZM. States should consult with OCZM on technical aspects of consolidating requests into a single application.

§ 923.96 Application for initial program development or implementation grants.

(a) The form SF-424, Preapplication for Federal Assistance, may be used at the applicant's option. If used, the Preapplication form should be submitted 120 days prior to the beginning date of the requested grant. The preapplication shall include documentation, signed by the Governor, designating the State office, agency or entity to apply for and administer the grant. Copies of the approved management program are not required.

(b) All applications are subject to the provisions of OMB Circular A-95 (revised). The Form SF-424, Preapplication for Federal Assistance, will be transmitted to the appropriate clearinghouses at the time it is submitted to OCZM.

The Preapplication form shall include an attachment indicating the date copies of the preapplication form were submitted to the State and areawide clearinghouses. The Preapplication form may be used to meet the project notification and review requirement of OMB Circular A-95 with the concurrence of the appropriate clearinghouses. In the absence of such concurrence, the project notification and review procedures established by State and areawide clearinghouses should be implemented simultaneously with the distribution of the Preapplication form.

(c) The Form SF-424, Application for Federal Assistance (Non-Construction Programs) constitutes the formal application and must be submitted 60 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with A-95 requirements including the resolution of any problems raised by the proposed project. OCZM will not accept applications substantially deficient in adherence to A-95 requirements.

(d) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein, the terms "cost" and "grant project" pertain to both the Federal grant and the matching share. Allowability of costs will be determined in accordance with the provisions of FMC 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments.

(e) In Part IV—Program Narrative of the Form SF-424, the applicant shall describe clearly and briefly the activities that will be undertaken with grant funds in support of implementation and administration of the management program. This description shall include:

(1) An identification of those elements of the approved management program that are to be supported in whole or in part by the Federal and the matching share,

(2) A clear statement of the major tasks required to implement each element,

(3) For each task:

(i) Specify how it will be accomplished and by whom;

(ii) Identify any subgrantees or contractors that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of the subgrant or contract for

each allocation. Identify, if any, that portion of the task that will be carried out under contract with private firms or individuals and indicate the estimated cost of such contract(s);

(iii) Indicate the estimated total cost. Also indicate the estimated total person-months if any, allocated to the task from the applicant's staff;

(iv) Indicate the percent estimated to be completed during the grant period.

(4) The sum of all task costs in subparagraph (3) above should equal the total estimated grant project cost.

(5) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff that will be assigned to the grant project. Also indicate the number assigned full time and the number assigned less than full time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project.

(f) In addition to the requirements of paragraphs (a)-(e) above, Part IV—Program Narrative for an initial section 305 program development grant must contain the following:

(1) A summary of the State's past and current activities in its coastal zone and a description of the current status of coastal management and related activities;

(2) A discussion and ranking by general order of importance of the major coastal zone related problems and issues facing the State;

(3) An identification of the goals the State expects to achieve by development of its coastal management program, and the objectives it has set to meet these goals; and

(4) A description of the overall program design for developing the management program. This should be an outline of the State's plan of action, identifying the work necessary to develop an approvable management program. The applicant should describe in brief and concise terms how the overall program design is intended to meet the requirements set forth in Subparts A-F of these regulations. Specifically, the program design shall include:

(i) An identification of existing information and sources of information;

(ii) A projection as to additional information needed;

(iii) A description of methods for public participation;

(iv) A description of the processes by which the State intends to involve various levels of government in the development of the management program; and

(v) An identification of any other Federal or State plan, program or activity which may have a significant impact on the State's coastal zone. As it is developed, the coastal management program should include methods to coordinate federally assisted programs, pursuant to the requirements of § 923.56.

§ 923.97 Applications for subsequent program development grants.

(a) Subsequent development grants will follow the procedures set forth in § 923.96 (a), (b), (c), and (e) except that the preapplication form may be used at the option of the applicant. If used, the procedures set forth in § 923.96(a) will be followed. In any event, the A-95 project notification and review procedures established by State and areawide clearinghouses shall be followed. Additionally, the program design (§ 923.96 (f)(4)) shall be updated to:

(1) Describe the anticipated design and content of the management program, including the major issues the program will address, and the policies and management techniques that will be proposed to address these issues;

(2) Describe how the past year's work contributed to the accomplishment of the overall program design and specifically to meeting the requirements for program approval;

(3) Examine and assess the need, if any, to modify the overall program design or the program's goals and objectives or both in view of the above or any emerging opportunities or problems; and

(4) Indicate when the State will submit a management program to the Assistant Administrator for review and final approval pursuant to section 306 of the Act or for preliminary approval pursuant to subsection 305(d) of the Act.

(b) In evaluating whether a State is making satisfactory progress towards completion of an approvable management program which is necessary to establish eligibility for subsequent grants, the Assistant Administrator will consider:

(1) The progress made towards meeting management program goals and objectives;

(2) The progress demonstrated in completing the past year's work program;

(3) The cumulative progress towards meeting the requirements for preliminary or final approval of a coastal management program;

(4) The applicability of the proposed work program to fulfillment of the requirements for final approval; and

(5) The effectiveness of mechanisms for insuring public participation and consultation with affected Federal, State, regional and local agencies in program development.

§ 923.98 Applications for subsequent program implementation grants.

Second and subsequent year applications will follow the procedures set forth in § 923.96 (a), (b), (c) and (e) except that:

(1) The Preapplication form may be used at the option of the applicant. If used, the procedures set forth in § 923.96 (a) shall be followed;

(2) The Governor's document designating the State agency to receive and administer the grant is not required unless there has been an approved change of designation; and

(3) Copies of the approved management program and approved changes are not required.

§ 923.99 Applications for preliminary approval grants.

(a) The primary purposes of preliminary approval grants are to assist a State in insuring ultimate implementation of a fully developed program design and to provide for initial implementation of approved management elements. Additionally, subsection 305(d) funding may be used to meet the requirements of subsection 305(b) (7), (8), and (9). The purpose of these guidelines is to define the procedures by which grantees apply for and administer grants under the Act.

(b) No subsection 305(d) grant will be made after September 30, 1979.

(c) The Form SF-424, Application for Federal Assistance (Non-Construction Programs), constitutes the formal application and must be submitted 60 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with A-95 requirements including the resolution of any problems raised by the proposed project. The Assistant Administrator will not accept applications substantially deficient in adherence to A-95 requirements.

(d) In Part IV, Program Narrative of the Form SF 424, the applicant should respond to the following requirements:

(1) Set forth a work program describing the activities to be undertaken during the grant period. This work program shall include:

(i) A precise description of each major task to be undertaken to resolve section 306 deficiencies, and a specific timetable for remedying these deficiencies;

(ii) A precise description of implementation activities for approved management components, including a demonstration that these implementation funds will not be applied outside the approved coastal management boundaries;

(iii) A precise description of any other tasks necessary for and allowable under subsection 305(d);

(iv) For each task, identify any "Other Entities," as defined in the "Manual," that will be allocated responsibility for carrying out all or portions of the tasks, and indicate the estimated cost of the subcontract for each allocation. Identify, if any, that portion of the task that will be carried out under contract with consultants

and indicate the estimated cost of such contract(s); and

(v) For each task, indicate the estimated total cost. Also, indicate the estimated total months of effort, if any, allocated to the task from the applicant's staff.

(2) The sum of all task cost in the above paragraph should equal the total estimated grant project cost.

(3) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff that will be assigned to the grant project. Also indicate the number assigned full time and the number assigned less than full time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project.

§ 923.100 Application for three new planning elements.

(a) For those States receiving program development grants up to October 1, 1979, pursuant to subsections 305(c) or 305(d), the work program and funding request for the subsection 305(b) (7), (8), and (9) planning elements should be developed as part of the overall work program and grant application pursuant to the procedures contained in § 923.96 for subsection 305(c) grants or pursuant to § 923.99 for subsection 305(d) grants.

(b) For States that have an approved management program or will have an approved management program by October 1, 1978, those States may receive program development grants for the express purpose only of fulfilling the subsection 305(b) (7), (8), and (9) requirements prior to October 1, 1978. States with program approved prior to or by October 1, 1978, must fulfill these three requirements by that date. States with program implementation grants which also wish to receive the program development grants for this specified purpose and within the specified time limit may make application for section 305 planning funds and section 306 implementation funds using a single application form. The work tasks and costs associated with the new planning elements must be clearly and separately identified. States should consult with the Assistant Administrator for detailed guidance on the preparation and content of a combined application. Alternatively States may make two separate applications—one following the requirements set forth in § 923.96 for section 305 grants and one following the application requirements in § 923.96 for section 306 administrative grants.

(c) Comment. Statutory Citation, Subsection 305(h):

> Whenever the Secretary approves the management program of any coastal State under section 306, such State thereafter (1) shall not be eligible for grants under this section except that such State may receive grants under subsection (c) in order to comply with the requirements of Paragraphs (7), (8), and (9) of subsection (b) * * *.

§ 923.101 Approval of applications.

(a) The application for a grant by any coastal State which complies with the policies and requirements of the Act and these guidelines shall be approved by the Assistant Administrator, assuming available funding.

(b) Should an application be found deficient, the Assistant Administrator will notify the applicant in writing, setting forth in detail the manner in which the application fails to conform to the requirements of the Act or these regulations. Conferences may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) The Assistant Administrator may, upon finding of extenuating circumstances relating to applications for assistance, waive appropriate administrative requirements contained in this subpart.

§ 923.102 Grant amendments.

Amendments to a grant award must be submitted to, and approved by, the Assistant Administrator prior to initiation of the contemplated change. Requests for substantial changes should be discussed with the Assistant Administrator well in advance. The grantee shall be notified within 30 days from date of receipt of the request whether the grant amendment has been approved or if it still is under consideration and when the grantee may expect a decision. All amendments to the grant must be approved in writing by the NOAA Grants Officer.

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WEDNESDAY, MARCH 1, 1978
PART III



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

■

COMMUNITY DEVELOPMENT BLOCK GRANTS

Eligible Activities

[4210-01]

Title 24—Housing and Urban Development

CHAPTER V—OFFICE OF THE ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-471]

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart C—Eligible Activities

AGENCY: Department of Housing and Urban Development.

ACTION: Final rulemaking.

SUMMARY: HUD is issuing final rules on Subpart C of the regulations governing eligible activities for the community development block grant program under Title I of the Housing and Community Development Act of 1974, as amended. Rules governing the eligibility of activities have been revised for clarity and to incorporate new activities authorized by Title I of the Housing and Community Development Act of 1977.

EFFECTIVE DATE: March 1, 1978.

FOR FURTHER INFORMATION CONTACT:

William Hammer, Program Standards Division, Office of Community Planning and Development, Department of Housing and Urban Development, Washington, D.C. 20410, 202-755-6304.

SUPPLEMENTARY INFORMATION: On October 25, 1977 (42 FR 56540) proposed revisions to Subpart C were published in the FEDERAL REGISTER for public comment. Interested parties were given until November 25, 1977, to submit written comments. All comments received with respect to the proposed rules governing eligible activities in Subpart C were given due consideration. As a result of the comments received, the following changes were made:

General Policies

Based upon several suggestions contained in comments on the proposed regulations, a number of changes were made to the general policies governing eligible activities.

Paragraph (a) of § 570.200 was revised to indicate that activities must comply with the general purposes of the block grant program and program requirements as they apply specifically for entitlement applicants in Subpart D, applicants under the Secretary's Fund in Subpart E, Small City applicants in Subpart F, or Urban Development Action Grant applicants in Subpart G. The principal purpose of this paragraph is to serve as a reminder that activities may be funded only where the eligibility requirements of this subpart and other specific requirements for each type of applicant contained in Subparts D, E, F, or G are met. The paragraph is not intended to replace or modify those requirements, but to direct attention to the fact that there are other requirements that must also be met.

Urban Development Action Grant

The eligibility of activities under the Urban Development Action Grant (UDAG) program has been changed in paragraph (b) of § 570.200 in accordance with several comments. First, it has been made clear that UDAG funds may be used for new housing construction. Secondly, the rules governing ineligible activities set forth in § 570.207 do apply to the UDAG program. When HUD exercises the special authority set forth in § 570.453 which permits a finding that activities are consistent with the statutory objectives for UDAG, this special authority is not limited by § 570.207 and activities which might normally be deemed ineligible for block grant funding may nonetheless be authorized by HUD.

Model Cities Activities

In response to several questions raised by the comments, paragraph (c) of § 570.200 has been revised to indicate that once the special authority for previous model cities activities has expired, old model cities activities must then meet the regular eligibility requirements of Subpart C in order to be eligible to continue to receive block grant funds.

Activities Outside of an Applicant's Boundaries

Several comments requested clarification of the provisions governing the use of block grant funds outside of an applicant's boundaries. The general rule is that the undertaking of an activity by an applicant outside of its boundaries is permissible so long as it is not plainly inappropriate to meeting the applicant's identified needs or inconsistent with State or local law.

Special Assessments

There were a number of comments directed at the issue of special assessments under the block grant program. Section 570.206(h) of the proposed regulations has been deleted and a new paragraph (f) of § 570.200 has been added regarding special assessments.

A new paragraph (f)(1) contains a definition of "special assessments" which makes clear that the term is directed toward fees charged for the capital cost of installation of public improvements and is not related to property taxation or determination of property values for the purposes of taxation.

Paragraph (f)(2) establishes a general rule that no special assessments may be levied which would recover any costs of a public improvement provided with block grant funds. Charging low- and moderate-income persons for improvements provided with block grant funds is contrary to the basic purposes of the program.

The paragraph does provide that HUD may grant applicants exceptions to the general rule to permit special assessments to be levied against properties as a means of leveraging private investment to implement strategies for economic development or neighborhood revitalization so long as no special assessments are levied against properties owned and occupied by low- and moderate-income persons and any block grant funds which are recovered are treated as program income.

Paragraph (f)(3) indicates that where eligible public improvements are provided from local revenue sources which will be reimbursed through special assessments, block grant funds may be used to pay the special assessments in behalf of low- and moderate-income property owners. In order for special assessments to be paid with block grant funds, the public improvements must be identified in the Community Development Program, and have been initiated on or after the effective date of these regulations. Applicants which propose to pay special assessments with block grant funds must carry out the appropriate environmental reviews and clearances for the public improvement under 24 CFR Part 58.

Consultant Activities

Paragraph (g) of § 570.200 regarding consultant fees received a great deal of comment. The limitation on consultant fees was prescribed by statute in section 409 of Department of Housing and Urban Development Independent Agencies Appropriation Act, 1978 (Pub. L. 95-119). Therefore, there is no alternative to the GS-18 limitation on compensation of consultants which is required by statute. The current rate of compensation under Federal law for a GS-18 is $47,500 per year, with a daily rate calculated to be $182.68.

Any contract with a consultant shall provide that each person acting as a consultant or employed by a consulting firm shall not be compensated at more than a reasonable rate which may not exceed the statutory maximum. Further, contracts for such services shall specify that the amounts of compensation and payments to a consultant shall be subject to adjustment where monitoring reviews or audits indicate that personal services were compensated at greater than a reasonable rate.

TRANSITION POLICY FOR FISCAL YEAR 1978

A number of activities contained in Subpart C contain, as a part of their requirements for eligibility, a relationship to the strategy statements. Other activities are to be located in or serve a Neighborhood Strategy Area (NSA), which is the term now used instead of Comprehensive Neighborhood Revitalization Area described in Subpart D of the proposed regulations.

Since many applications will be received prior to the effective date of that subpart, paragraph (h)(1) of § 570.200 sets forth an interim policy to enable applicants to undertake these activities prior to the submission of the three year strategy statements.

Applicants desiring to carry out these activities during fiscal year 1978 shall submit a brief narrative interim policy description. This will include for each proposed activity requiring a relationship to a strategy statement, a brief description of the activity, the needs and conditions that the activity is designed to address, and how the activity will impact on those needs and conditions.

Paragraph (h)(2) sets forth provisions for designation of interim NSA's. HUD agreed with the comments that the definition of Comprehensive Neighborhood Revitalization Area contained in the proposed rules was too stringently defined and will use the term "Neighborhood Strategy Area (NSA)" in lieu of Comprehensive Neighborhood Revitalization Area. NSA is more broadly defined than the previous term. For example, the three to five year limit on substantially meeting the needs of the area is no longer used. As it is now defined, the term also provides greater flexibility and is applicable to varied local conditions. If the applicant concentrates physical development activities in a given area in a manner consistent with the statutory requirements for public services described in § 570.201(e), the area should meet the revised definition for an NSA. Upon the issuance of final regulations governing Subpart D, the preamble will further describe these changes.

The paragraph further describes the interim NSA designation that may be used during fiscal year 1978 prior to the adoption of final rules governing Subpart D. The interim NSA's are designated by the applicant. A brief narrative description of the applicant's plans for activities in the NSA should be included.

ACQUISITION OF REAL PROPERTY

In response to one comment, paragraph (a) of § 570.201 has been changed to make clear that rights-of-way and easements may be purchased with block grant funds.

Paragraph (a)(5) includes a second example of acquisition for other public purposes which is acquisition of land for development of low- and moderate-income housing.

There were a number of comments regarding the example contained in paragraph (a)(5). This example was intended as only one among many legitimate public purposes for which block grant funds may be used and HUD has decided to retain the example. Central cities might decide to acquire existing housing within their jurisdictions or outside at their own discretion, pursuant to State and local law, as means to implement strategies for spatial deconcentration. This example was cited for illustrative purposes in response to questions about such undertakings which have arisen several times in the past. HUD wished to clarify that funds may be used in this manner. Applicants have full discretion to decide whether to employ such a mechanism and to formulate appropriate means for such an undertaking with adjoining jurisdictions.

NEIGHBORHOOD FACILITIES

Paragraph (c)(4) has been revised as a result of comments to delete the reference to a specific 51 percent requirement. The 51 percent rule was perceived to imply that some form of quantitative measurement would be necessary. This was not intended and the requirement has been deleted. Neighborhood facilities shall be primarily designed to meet the needs of neighborhood residents. This does not preclude incidental use of neighborhood facilities by non-residents.

Paragraph (c)(4)(i) has been changed to indicate that a neighborhood facility may serve an area locally designated as a neighborhood.

Paragraph (c)(4)(ii) has been revised to include small cities of 25,000 population or under as the equivalent of a neighborhood. The increase from 10,000 to 25,000 population has correspondingly been revised in § 570.207(a)(2)(i).

SOLID WASTE DISPOSAL FACILITIES

There were a number of comments regarding solid waste disposal facilities. The facilities eligible for assistance quite simply do not include the use of block grant funds for the initial collection of solid waste. Items such as garbage collection trucks and trash collection receptacles are not eligible. Similarly, using block grant funds to provide solid waste collection services under this paragraph is not eligible. Paragraph (c)(5)(ii) accordingly reflects that initial collection of solid waste is not eligible.

Sites, fixtures, and equipment used after the final collection process are eligible. This may include incinerators or sanitary land fills and their appurtenances. Similarly, intermediate transfer sites, fixtures, and equipment are also eligible for block grant funding.

Solid waste disposal facilities must serve areas where activities included in the Community Development Program are being carried out, such as neighborhood strategy areas. Paragraph (c)(5)(i) implements this requirement. The reference to being located in such an area should not be taken as encouragement for the location of solid waste facilities in residential neighborhoods.

FIRE PROTECTION AND PARKING FACILITIES

Paragraphs (c) (6) and (7) of § 570.201 have been changed pursuant to comments to provide that such facilities must be located in or serve areas where activities listed in the Community Development Program are being carried out, such as Neighborhood Strategy Areas.

STREET IMPROVEMENTS

Several comments suggested that curbs, gutters, and sidewalks be mentioned specifically. Paragraph (c)(9) of § 570.201 has been changed accordingly.

RECREATION FACILITIES

Several comments questioned whether any spectator facilities could be provided as an incidental part of recreation facilities authorized by paragraph (c)(2) of § 570.201, which is substantially identical to the rule in effect for the past three years. It would certainly be permissible to provide limited seating space for spectators at recreational facilities. For example, some limited seating facilities at a softball field which are incidental to the primary use for persons to participate would be permissible, whereas a facility with seating accommodations for several hundred or more persons to watch competitive sports such as high school football is more properly considered an ineligible spectator facility.

OTHER PUBLIC FACILITIES AND IMPROVEMENTS

Paragraph (c)(14) of § 570.201 provides that public facilities and improvements other than those listed in § 570.201(c) may be assisted where they are necessary and appropriate to implement an applicant's strategy for neighborhood revitalization or housing. General municipal buildings which are described as ineligible in § 570.207(a)(1) will not be authorized. Applicants must submit to HUD a description of the proposed facility or improvement and its relationship to the applicant's strategy. In authorizing activities under this provision HUD will consider the amount of benefit to low- and moderate-income persons which results, the degree of

impact on the identified needs of the applicant, and the availability of other Federal funds for the activity.

PUBLIC SERVICES

Quite a number of comments were received regarding public services. The statutory requirements governing services are very specific and HUD is limited by those requirements. Paragraph (e) of § 570.201 has been revised pursuant to comments as follows:

First, the introductory paragraph indicates that a service must meet five criteria to be eligible for funding.

Paragraph (e)(1) has been changed to delete the word "must" which conveyed the impression that services are required to be provided. Rather, the provision of eligible services is at the option of the applicant, but can be provided in a Neighborhood Strategy Area where there is the required concentration of block grant funded community development activities.

The proposed rule stated that public services must be provided for residents of Comprehensive Neighborhood Revitalization or similar areas. Analysis of the comments showed two major areas of concern. Many comments indicated that public services should be permitted anywhere in the locality so long as the services benefitted low- and moderate-income persons. Others felt the definition of Comprehensive Neighborhood Revitalization Areas was too restrictive and expressed concern that the definition would limit activities to areas which were very small or in relatively good condition, thus preventing applicants from undertaking comprehensive programs in areas of greatest need or designating areas large enough for public services to be provided in an economical and effective manner.

The final rule permits public services to be provided only in Neighborhood Strategy Areas which is the term used in place of Comprehensive Neighborhood Revitalization Area. The statute permits public services only in those areas where block grant funded physical development activities are being carried out in a concentrated manner. The limitation of public services to NSA's most closely conforms to this statutory requirement and is intended to eliminate the confusion regarding the eligibility of public services. Notwithstanding the worthiness of many services or the desire expressed in some comments for greater flexibility to fund services, the statute does not provide for block grant assistance for citywide public services.

Finally, the paragraph has been changed to indicate that during each year the required concentration of activities is present, public services may be provided, and services may aslo be continued for up to three years afterward. Hence, a service might be provided in an area for four years when the required concentration of block grant assisted physical development activities was present and be continued for three more years after the physical development activities were complete.

Paragraph (e)(2) has been revised to delete the requirement that two-thirds of the persons receiving a public service be neighborhood residents. This requirement was confused with the proposals in Subpart D as proposed relating to program benefit and could require quantitative measurement not contemplated by the statute. Services must be designed to serve area residents, but may also serve other residents on an incidental basis.

Some of the comments demonstrated confusion regarding the relationships to State, local and Federal funding sources. Paragraph (e)(3) has been revised to refer to local revenue sources. A service must be a quantifiable increase over the level of service provided in the previous twelve months from the revenue sources of the applicant or from State funding sources. The statute did not include Federal sources and neither does this regulation. Rather, Federal sources must be determined not to be available at the time of funding pursuant to paragraph (e)(4). An otherwise eligible service provided from block grant funds may also be continued at the same level in subsequent years since Federal funds are not measured.

In paragraph (e)(5), an example has been cited of an activity necessary and appropriate to support physical development activities. Several comments suggested that applicants be required to submit all determinations for review by HUD. Such a process was tried in prior years and was ineffective. The process of a local determination of appropriateness to be made by applicants will be retained with provision for HUD oversight in those more extreme cases where the required linkages are obscure.

Finally, the only physical development activities which are able to satisfy the requirements of paragraph (e) are those funded from the block grant program. This requirement is statutory and cannot be modified as several comments have suggested.

INTERIM ASSISTANCE

As a result of a number of comments, paragraph (f) of § 570.201 has been revised. Interim assistance may take place in two situations. First, in areas designated for physical development activities to take place during the three year period of the Community Development Program, certain interim activities may be undertaken as a prelude to the carrying out of more comprehensive treatment and to hold the area from further deterioration.

Paragraph (f)(1) describes these activities. These include the collection of garbage, trash, and debris as part of neighborhood clean up compaigns. However, the regular collection of garbage or trash in an area at curb side would be considered a normal municipal service and is not eligible for assistance.

Paragraph (f)(2) discusses the second type of interim assistance activity which is directed toward the alleviation of imminent threats to public health and safety. The chief executive officer of an applicant may determine that an imminent threat to public health and safety exists in an area and shall inform the appropriate HUD Area Office within seven days of the determination. Imminent threats to the public health and safety are described in greater detail in Subpart F. Three types of activities may be undertaken as interim assistance in areas where an imminent threat is present. These include the repair of private property, the repair of public facilities and improvements, and the removal of trash, debris, and unsafe structures.

REMOVAL OF ARCHITECTURAL BARRIERS

Several comments requested further clarification of the term "privately owned" as it relates in paragraph (k) of § 570.201 to the removal of architectural barriers. The term is quite literal in its use and means any privately owned building, facility, or improvement. This includes residential structures and non-residental structures. For example, architectural barriers to privately owned apartment buildings or supermarkets could be removed with block grant funds pursuant to paragraph (k).

Applicants undertaking barrier removal activities to be carried out with block grant funds are encouraged to follow the standards prescribed by the American National Standards Institute, Incorporated in publication ANSI A117.1—1961 (R1971).

ASSISTANCE TO PRIVATE UTILITIES

Paragraph (1) of § 570.201 authorizes the use of block grant assistance to privately owned, publicly regulated utilities for activities including the placing of distribution facilities underground. Such activities must be necessary and appropriate to implement an applicant's strategy for neighborhood revitalization, or housing in order for assistance to be provided for this type of commercial real property improvement.

REHABILITATION OF RESIDENTIAL STRUCTURES BY PUBLIC BODIES

As a result of several comments, paragraph (a) of § 570.202 has been changed to clarify the term "public residential structures." Block grant

funds may be used to rehabilitate properties owned or acquired by a public body which are either to remain in public ownership or to be sold. This includes single and multifamily permanent dwelling units and residential facilities, including group homes, halfway houses and emergency shelters.

REHABILITATION BY PRIVATE ENTITIES

A number of comments were received regarding paragraph (c)(1) of § 570.202 which have resulted in a number of revisions.

Private entities, including both those which are nonprofit and profit making, may use block grant funds to acquire structures for rehabilitation to be used as housing. This includes both permanent single and multifamily dwelling units which may be retained by the private entity or resold, and also residential facilities such as group homes, halfway houses, and emergency shelters. Upon completion of the rehabilitation activities the housing units must meet the basic health and safety standards of the Section 8 Existing Housing Program.

OTHER REHABILITATION ASSISTANCE

Block grant funds may be used in a number of ways to assist in the rehabilitation of privately owned properties. Paragraph (d) of § 570.202 indicates that block grant funds may be used for temporary relocation expenses for those displaced temporarily by rehabilitation activities being carried out with block grant assistance.

In response to several comments paragraph (c)(2) states that rehabilitation financing may be provided either in areas where activities listed in the community development program are being carried out or on a citywide spot basis for low- and moderate-income persons.

Paragraph (c)(2)(iii) makes clear that both heating and cooling equipment may be converted, modified, or replaced and states explicity that solar energy equipment may be used. Although applicants may carry out a program of rehabilitation assistance designed solely to weatherize units and increase their energy efficiency, such program should not ignore serious deficiencies in units being weatherized which render the units unsafe.

Paragraph (c)(2)(v) has been added in response to several comments. The paragraph permits the use of block grant funds to pay initial homeowner warranty premiums at the time of loan or grant settlement to protect the quality of workmanship of the rehabilitated unit.

Several comments requested that HUD permit activities to be carried on a longer-term basis as a means of supporting neighborhood stabilization efforts once physical rehabilitation of the structures is completed, including activities to assist low- and moderate-income persons to maintain rehabilitated units in order to continue the stabilization of an area once more comprehensive treatment is completed. Such activities must meet the public services provisions of § 570.201(e).

Paragraph (c)(3) provides that block grant funds may be used to purchase materials for the rehabilitation of properties. Applicants should make adequate provision to ensure that arrangements are made to provide the labor necessary to utilize the materials in rehabilitation efforts. In some instances the property owner or tenant may be able to donate the labor, or other arrangements, such as the use of CETA grant funds, might be developed by the applicant.

CODE ENFORCEMENT

Several comments indicated that code enforcement activities should be permitted on a citywide or spot basis. The statutory authority for this activity does not provide for the use of block grant funds in such a manner. Rather code enforcement must be undertaken as part of a more comprehensive treatment of a deteriorated or deteriorating area. This activity should be designed to supplement, but not replace an applicant's routine enforcement activities.

Paragraph (e) of § 570.202 has been modified to indicate that block grant assisted code enforcement activities may only take place in areas where activities listed in the Community Development Program are being carried out, such as Neighborhood Strategy Area.

HISTORIC PRESERVATION

Paragraph (f) of § 570.202 had been changed to include properties listed on local registers of historic places among those properties defined as historic by this paragraph.

A number of comments addressed the program benefit criteria set forth in § 570.302 as they relate to historic preservation activities. These requirements are set forth in other subparts of these regulations depending upon the nature of the applicant. For example, entitlement applicants should refer to the appropriate requirements of Subpart D to determine whether historic preservation activities, or any other activities, comply with the criteria regarding program benefit.

ECONOMIC DEVELOPMENT ACTIVITIES

A large number of comments were received regarding the economic development activities described in § 570.203. Several comments suggested that activities listed in other sections of the subpart also be listed here. Activities listed in §§ 570.201 and 570.202 may also be undertaken for the purpose of supporting economic development. For example, § 570.201(d) provides sufficient authority for the use of block grant for clearance and demolition activities for economic development purposes. It would be redundant to provide for clearance and demolition activities in § 570.203 when sufficient authority for these activities is available elsewhere.

There was some concern expressed in the comments regarding the apparent open ended nature of activities authorized by this section particularly the authority in paragraph (b) for otherwise ineligible public facilities and improvements. The paragraph has been revised to exclude general government facilities listed in § 570.207(a)(1) from gaining eligibility under this paragraph. Activities undertaken pursuant to § 570.203 must be necessary and appropriate to implement an applicant's economic development strategy.

In order for an otherwise ineligible facility or improvement to be funded under paragraph (b), specific prior authorization must be obtained from HUD. In authorizing activities, HUD will determine the necessity or appropriateness of an activity by taking into account several factors, such as the amount of long-term employment the facility or improvement will generate for low- and moderate-income persons, the necessity of the activity for stimulating private investment, the degree of impact on the economic conditions of the applicant, and the availability of other Federal funds for the activity.

Applicants must also request determinations for paragraphs (a) and (c). By implementing the statutory provisions in this manner for activities which are not normally a part of the block grant program, HUD will ensure the flexibility for applicants and that, where such special activities are to take place under § 570.203, they occur within the framework of the basic objectives of the block grant program.

Several comments suggest that an authority similar to that provided in § 570.204(c) also be provided directly for applicants in § 570.203. Special authority was provided in the statute for neighborhood based nonprofit organizations, Small Business Investment Companies, and local development corporations. The statute does not provide a similar authority for applicants, so such a provision cannot be included in § 570.203.

ACTIVITIES BY PRIVATE NONPROFIT ENTITIES, NEIGHBORHOOD-BASED NONPROFIT ORGANIZATIONS, SMALL BUSINESS INVESTMENT COMPANIES, AND LOCAL DEVELOPMENT CORPORATIONS

A number of comments were received requesting clarification of § 570.204. paragraphs (a)(2) (i) and (ii) of Section 570.204 have been revised to

distinguish between private nonprofit entities and neighborhood based nonprofit organizations. Certain activities may be undertaken by only neighborhood-based nonprofit organizations, and not other private nonprofit entities under paragraph (c) of this section. A nonprofit organization which is neighborhood-based is defined in paragraph (a)(2)(ii) as one having a majority of its membership, clientele, or governing body residing in the neighborhood where the activities are to be carried out.

Paragraph (a)(2)(i) describes the other private nonprofit entities which do not qualify as neighborhood based. Although these entities may use block grant funds are eligible activities under paragraph (b), they are excluded from the authority to undertake certain other special activities listed in paragraph (c).

Paragraph (a)(2)(iii) has been revised to refer to Small Business Investment Companies (SBICs) organized pursuant to § 301(d) of the Small Business Investment Act of 1958, as amended, which include profitmaking entities. SBICs which are organized on a profitmaking basis are fully eligible to use block grant assistance.

Paragraph (a)(2)(iv) now includes State development corporations eligible under § 501 of the Small Business Investment Act of 1958, as amended, among the entities defined as local development corporations for the purposes of the block grant program. Paragraph (c)(4) has been changed to exclude assistance for general municipal buildings ineligible under § 570.207(a)(1) and political activities ineligible under § 570.207(e) from those activities which may be carried out under the special authority of this paragraph.

Paragraph (b) has been revised to clarify that entities eligible to carry out activities with block grant assistance under § 570.204 may use block grant funds to acquire title to facilities. These facilities must be open to the general public during those hours of normal operation, and excessive fees for the use of the facility which would exclude low- and moderate-income persons shall not be charged.

Planning Activities

As a result of several comments, paragraph (a)(4) of § 570.205 has been changed to indicate that planning activities may include surveys of historic properties, and surveys and plans for removal of architectural barriers to the handicapped and elderly.

Paragraph (c) has been modified to permit § 701 type comprehensive planning activities to be carried out by all applicants and not be restricted to metropolitan cities and urban counties as originally proposed. Further, activities under this paragraph must be determined by HUD to be necessary or appropriate to meeting the needs and objectives of its community development plan. It is recognized that comprehensive planning activities carried out with block grant funds may relate to elements beyond the scope of activities eligible for assistance under §§ 570.201 and 570.202.

Administrative Costs

A number of comments were received regarding general administrative costs which are now set forth separately in § 570.206. Several comments suggested that HUD place a percentage limitation upon the amount of block grant funds that an applicant may spend on administration. Because of the variety of grant sizes, types of applicants, and activities being undertaken which vary in complexity, HUD has determined that there is no single limitation that could be imposed which would be equitable in all situations. Rather, the term "reasonable" is the key term in the statute and in the paragraph. HUD will continue to monitor administrative costs, particularly where applicants incur administrative costs significantly higher than those of other applicants with similar grant sizes and activities.

Other Block Grant Administrative Costs

As a result of comments, several revisions have been made to the general program activities, which, for the block grant program, are considered to be administrative costs.

Paragraph (f) of § 570.206 permits the use of block grant funds to prepare applications for other Federal programs when the activities to be carried out are necessary and appropriate to implement the applicant's community development strategy. There are special rules governing the reimbursement of cost for small cities set forth in Subpart F. Applicants may use block grant funds, other than UDAG funds, for the preparation of applications for the UDAG program.

Paragraph (c) has been revised to refer to housing counseling and other activities undertaken by applicants to affirmatively further fair housing and provide a greater choice of housing opportunities laws. Other forms of housing couseling are eligible for block grant funding where the requirements of § 570.201(e) are met.

Paragraph (d) has been revised to include both performance and payment bonding for contractors carrying out block grant activities. The paragraph makes clear that this may be accomplished by using block grant funds to pay bonding premiums as well as other arrangements appropriate to this activity.

Paragraph (h) makes clear that historic preservation clearances that are a part of the broader environmental assessment and clearance of block activities are eligible for assistance.

Ineligible Activities

Paragraph (a) of § 570.207 has been changed to clarify several points resulting from requests contained in the comments. The basic rule is that items set forth as ineligible in this section generally may not receive block grant assistance. There are several specific exceptions. If a facility or improvement is authorized under the special authority to permit other public facilities and improvements necessary for strategy implementation pursuant to §§ 570.201(c)(14) or 570.203(b), respectively, this authorization is deemed to supersede the limitations of this paragraph. Further, the removal of architectural barriers and historic preservation activities authorized by §§ 570.201(k) and 570.202(g), respectively, may be carried out on facilities and improvements listed as a part of § 570.207(a) which would otherwise be ineligible for block grant assistance.

Paragraph (a)(2)(v) has been revised to clarify the nature of devices which are included as ineligible sewage treatment facilities. These include the actual treatment works, intercepting sewers, outfall sewers, pumping stations and other equipment. Block grant funds may be used to construct sewage collection lines, but not facilities for sewage treatment. Interceptor sewers are considered a part of the sewage treatment system and are excluded from eligibility.

Purchase of Equipment

Paragraph (b) of § 570.207 sets forth the policies relating to the ineligibility of purchasing equipment with block grant funds. The general rule is that block grant funds cannot be used to purchase equipment and items of personalty. There are several exceptions. Block grant funds may be used to purchase construction equipment which is as part of a solid waste disposal system described in § 570.201(c)(5). Funds may also be used by applicants and subgrantees to purchase furnishings and personal property used to administer a block grant program or a part of a public service pursuant to § 570.201(e). Paragraph (b)(2) also authorizes the use of block grant funds to purchase certain motor vehicles used in program administration or as a part of a public service.

Maintenance and Repair

Maintenance and repair activities related to the general upkeep of public facilities and improvements are the responsibility of units of general local government. Block grant funds may not be used for general maintenance and repairs, except for the special pro-

visions for interim assistance under § 570.201(f).

Paragraph (c) of § 570.207 has been revised to provide several examples of the types of maintenance and repair items that are excluded. In some cases, a fine line must be drawn between maintenance and repair, and rehabilitation of facilities and improvements which are eligible for assistance. Accordingly, several examples are cited; filling potholes in a street, which is repair, is ineligible, whereas resurfacing a street is considered for the purposes of the block grant program to be eligible as reconstruction or rehabilitation. Similarly, mowing grass in recreation areas is maintenance and is ineligible, but using block grant funds to add new equipment in a recreation area would be a permitted activity.

INDUSTRIAL PARKS

Paragraph (i) of § 570.207 of the proposed regulations has been deleted as a result of comments. Although HUD is deleting this paragraph because the test of firm commitments seems overly burdensome, applicants nonetheless should exercise judgement in using block grant funds for activities to develop an industrial park where firm commitments are not available. While HUD does not wish to deter those undertakings with the potential for success, HUD will use the monitoring process to watch for situations where activities are undertaken without commitments from potential users and are not attracted within a reasonable period of time.

COMMENTS NOT ACTED UPON

The description of the changes to Subpart C discussed a number of comments which HUD was unable to act upon. In many cases, comments proposed the inclusion or modification of activities not authorized by the statute or the exclusion of activities which were specifically authorized. Other comments proposed alternative directions on matters of Departmental policy which after due consideration, were not accepted.

The following are some of the comments already discussed which HUD did not agree to act upon for the reasons set forth above:

1. Permiting the use of block grant funds to construct new housing for the handicapped;

2. Requiring the concurrence of at least 60 percent of the residents of an area before initiating the acquisition of land;

3. Deleting or imposing additional requirements on the use of block grants for purchase of existing housing outside of an applicant's boundaries;

4. Requiring mandatory set asides of a certain percentage of block grant funds for a variety of individual activities, such as public services;

5. Excluding the construction of swimming pools as recreational facilities;

6. Excluding the construction of bike paths, pedestrian malls, and other public works authorized by the statute; and

7. Permitting the use of block grant to administer activities other than section 312 rehabilitation loans and section 810 Urban Homesteading, which are not funded by the block grant program;

A number of comments addressed departmental relocation policies. These comments were generally relevant to other subparts of the regulations and do not relate to the provisions of this subpart on the basic eligibility of payments and assistance.

Several comments suggested that school districts, local housing authorities, and other public bodies be added to the list of entities under § 570.204. This could not be accommodated because the statutory authority is limited to private entities.

Several comments were concerned about the coordination of block grant funded economic development activities with the programs of other Federal agencies. HUD certainly encourages applicants to coordinate their activities in such a manner as to best utilize all available resources, but does not feel that the imposition of certain specific requirements of other programs would be of benefit to either the block grant program, or other programs.

OTHER INFORMATION: A Finding of Inapplicability with regard to Environmental Impact has been prepared in accordance with HUD Handbook 1390.1, and a Finding of Inapplicability with regard to economic and inflationary impact has been prepared in accordance with Executive Order 11821 for Subpart C. Copies of the Findings are available for inspection and copying during business hours in the Office of the Rules Docket Clerk, Room 5216, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Accordingly, 24 CFR Part 570 is amended by revising the Table of Contents for Subpart C and by revising Subpart C as set forth below.

I. The Table of Contents to 24 CFR Part 570, Subpart C, is revised to read as follows:

Subpart C—Eligible Activities

Sec.
570.200 General policies.
570.201 Basic eligible activities.
570.202 Eligible rehabilitation and preservation activities.
570.203 Eligible economic development activities.
570.204 Eligible activities by private nonprofit entities, neighborhood-based nonprofit organizations, local development corporations, and Small Business Investment Companies.
570.205 Eligible planning and urban design costs.
570.206 Eligible administrative costs.
570.207 Ineligible activities.

AUTHORITY: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

II. Subpart C, Eligible Activities is revised to read as follows:

Subpart C—Eligible Activities

§ 570.200 General policies.

(a) *Determinations of eligibility.* This subpart sets forth the variety of eligible activities that may be undertaken with assistance under this Part (block grant funds) to meet community development and housing needs and priorities principally for low- and moderate-income persons or for the prevention or elimination of slums and blight. The listing of certain eligible types of activities in this subpart does not by itself, however, render specific activities, proposed to be conducted by individual applicants, eligible for block grant assistance. There are other requirements that must also be met to qualify a specific activity for assistance. An activity may be assisted only in those instances where it complies with the eligibility criteria of this subpart, with all other applicable requirements of this Part as they may apply to applicants under Subparts D, E, F, or G, such as those relating to equal opportunity, and the basic statutory objectives of the block grant program. In particular, activities conducted by entitlement recipients under Subpart D must comply with the requirements set forth in § 570.302 regarding benefit to low- and moderate-income persons or elimination of slums and blight, and small city discretionary recipients must comply with similar requirements set forth in Subpart F. Further, there must be compliance with all applicable environmental review and clearance procedures set forth in 24 CFR Part 58.

(b) *Urban Development action grants.* Grant assistance may be provided with Urban Development Action Grants pursuant to Subpart G for:

(1) Activities eligible for assistance pursuant to this Subpart; and

(2) Such other activities, including new housing construction, as the Secretary may determine to be consistent with the statutory objectives of the Urban Development Action Grant (UDAG) program as provided for in § 570.453. The provisions of § 570.207 regarding ineligible activities apply to the UDAG program, except where an activity is determined to be consistent with the statutory objectives of the UDAG program pursuant to § 570.453, the limitations set forth in § 570.207 do not apply.

In making determinations of eligibility with regard to Urban Development Action Grants, for the purposes of §§ 570.201-207, the term "Community Development Program" as used in this subpart shall also mean the "Urban Development Action Program."

(c) *Model cities activities.* Notwithstanding anything to the contrary in this subpart, any ongoing model cities activity being carried out in a model cities program shall be eligible for funding under this Part from that portion of the hold-harmless amount attributable to such model cities program until the applicant has received five years of funding for such activities as calculated pursuant to § 570.103(c)(2)(iii). For the purpose of this paragraph, the term "ongoing activity" means any model cities activity underway as of January 1, 1975, that was approved and funded by HUD on or before June 30, 1974. Upon expiration of the eligibility of activities under this paragraph, applicants should refer to the other requirements of this subpart which must be satisfied in order for block grant assistance to continue to be provided for model cities activities.

(d) *Special policies governing facilities.* The following special policies apply to: (1) *Facilities containing both eligible and ineligible uses.* Where a facility, otherwise eligible for assistance under the block grant program is to be provided as a part of a multiple-use building and/or facility that also contains otherwise ineligible uses, the portion of the costs attributed to the eligible facility may be assisted with block grant funds where;

(i) The facility, which is otherwise eligible and proposed for assistance, will occupy a designated and discrete area within the larger facility; and

(ii) The applicant can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

For example, a senior center, which is to occupy space within a building that is otherwise used for the conduct of general governmental business, may be assisted when it exclusively occupies a separate and designated area within the building (i.e, the senior center does not "float" to different locations within the building that happen to be available on a less than permanent basis) and the applicant can determine the cost associated with providing the senior center as distinct from those costs associated with all remaining ineligible portions of the building.

(2) *Facilities located on school property.* Any facility eligible for assistance pursuant to § 570.201(c), which is designed primarily for a public purpose other than education is not considered to be a school or educational facility where, although it is to be located on a site controlled by a school district, school board or similar body responsible for public education, the facility will only be used by any adjacent school or educational facility on an incidental basis. In order to determine whether the facility is to be used on an incidental basis, the applicant shall at a minimum demonstrate that:

(i) After school hours and on weekends, the facility shall be available for use by the general public to the same extent as similar facilities operating within the applicant's jurisdiction; and

(ii) During school hours, the facility is not used for school purposes for more than four hours each day.

(e) *Activities outside an applicant's boundaries.* Applicants may conduct activities which are otherwise eligible for block grant assistance outside of their boundaries which are not inconsistent with State or local law and which are not plainly inappropriate to meet identified needs of the applicant. This may include an urban county carrying out otherwise eligible activities within a metropolitan city with block grant assistance where the activities are not plainly inappropriate to meeting identified needs of the urban county.

(f) *Special assessments under the block grant program.* The following policies relate to the use of special assessment under the block grant program:

(1) *Definition of special assessment.* The term "special assessment" means a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, such as streets, curbs, and gutters. The amount of the fee represents the pro rata share of the capital costs of the public improvement levied against the benefitting properties. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes.

(2) *Special assessments to recover block grant funds.* The general rule is that special assessments shall not be used to recover any of the capital costs of a public improvement provided with block grant funds. Where both block grant and local funds are used to provide public improvements, any special assessment shall be prorated in proportion to the investment of each. Applicants may request an exception to this rule where the use of special assessments as a means to leverage private investment is necessary and appropriate to implement the applicant's strategy for economic development or neighborhood revitalization. Exceptions will not be granted by HUD for any special assessment which will recover costs of public improvements provided with block grant funds from properties owned and occupied by low- and moderate-income persons. Block grant funds recovered through special assessments authorized by HUD will be considered program income pursuant to § 570.506.

(3) *Special assessments paid with block grant funds.* Block grant funds may be used to pay special assessments levied against properties owned and occupied by low- and moderate-income persons for the capital costs of eligible public facilities and improvements financed from local revenue sources, other than block grant funds, which (i) are described in the Community Development Program; (ii) are initiated after the effective date of this provision; and (iii) represent the pro rata share of the capital cost of the eligible facility or improvement to the benefitting property.

(g) *Consultant Activities.* Applicants may employ consultants to provide professional assistance in program planning, application preparation, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

(1) *Program requirements,* including the requirements of this Part, Federal Management Circular 74-4, OMB Circular A-102, and applicable Federal, State, and local laws;

(2) *Written agreements* shall be executed between the parties which detail the responsibilities, standards; and fees;

(3) *Compensation for consultants.* No person employed as a consultant, or by a firm providing consultant services, shall receive more than a reasonable rate of compensation for personal services paid with block grant funds which, on a daily basis, shall not exceed the maximum daily rate of compensation for a GS-18 as established by Federal law; and

(4) *Adjustments* of rates of compensation and payments under consultant contracts may be made where audit and monitoring reviews indicate that the rates of compensation were not reasonable, or exceeded the maximum daily rate for a GS-18.

(h) *Transition policy for fiscal year 1978.* A number of activities set forth in Subpart C contain, as a part of the criteria for eligibility for block grant assistance, requirements that activities be necessary and appropriate to the implementation of certain strategies for community development and housing described in Subpart D, or that activities take place within Neighborhood Strategy Areas (NSA).

(1) *Interim strategy statement.* For those applications submitted during fiscal year 1978 prior to the effective date for the submission of strategies, applicants may submit a brief narrative interim strategy statement for activities subject to this requirement.

The interim strategy statement shall include:

(i) a brief description of the activity;

(ii) a brief description of the needs and conditions the activity is designed to address; and

(iii) a brief description of how the activity will impact upon the needs and conditions which it is designed to address.

(2) *Interim NSA designation.* For those applications submitted during fiscal year 1978, applicants may designate interim NSA's for activities subject to this requirement. An interim NSA is selected by the applicant and designated in the Community Development Program. In determining the size of the NSA, the applicant shall take into account the severity of its problems and the amount of resources to be provided to address those problems. For each area designated as an NSA, the applicant shall include a brief narrative description of its plan for stabilizing and upgrading the area which:

(i) provides for a combination of physical improvements, necessary public facilities and services, private investment and citizen self-help activities appropriate to the needs of the area; and

(ii) coordinates public and private investment efforts.

§ 570.201 Basic eligible activities.

Grant assistance may be used for the following activities:

(a) *Acquisition.* Acquistion in whole or in part by a public agency, by purchase, lease, donation or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) which is:

(1) Blighted, deteriorated, deteriorating, undeveloped or inappropriately developed from the standpoint of sound community development and growth, as determined by the recipient pursuant to State and local laws;

(2) Appropriate for rehabilitation or conservation activities;

(3) Appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources and scenic areas, the provision of recreational opportunities or the guidance of urban development;

(4) To be used for the provision of public works, facilities and improvements eligible for assistance under this subpart; or

(5) To be used for other public purposes, including the conversion of land to other uses where necessary or appropriate to the community development program. Examples include an applicant purchasing land to be used for the development of housing for low- and moderate-income persons, and an applicant which is a central city of a metropolitan area using block grant funds to purchase houses in a non-impacted suburban jurisdiction in order to provide a wider choice of housing opportunities for central city lower-income residents.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with block grant funds or its retention for public purposes, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 570.506. Further information regarding disposition is set forth in § 570.613.

(c) *Public facilities and Improvements.* Acquisition, construction, reconstruction, rehabilitation, or installation of certain publicly owned facilities and improvements. This may include the execution of architectural design features, and similar treatments intended to enhance the esthetic quality of facilities and improvements receiving block grant assistance, such as decorative pavements, railings, sculpture, pools of water and fountains, and other works of art. Public facilities and improvements eligible for assistance under this paragraph include:

(1) *Senior centers,* but excluding any facility whose primary function is to provide residential accommodations or care on a 24-hour day basis (such as a group home).

(2) *Parks, playgrounds and other recreational facilities* which are designed for participation, but not spectator facilities such as stadiums.

(3) *Centers for the handicapped.* The term "center for the handicapped" means any single or multipurpose facility which seeks to assist persons with physical, mental, developmental and/or emotional impairments to become more functional members of the community by providing programs or services which may include, but are not limited to, recreation, education, health care, social development, independent living, physical rehabilitation and vocational rehabilitation; but excluding any facility whose primary function is to provide residential care on a 24-hour a day basis (such as a group home or halfway house). For example, a sheltered workshop would be a single purpose center for the handicapped, and a facility providing several services for the handicapped would be a multipurpose center for the handicapped, both of which are eligible for assistance.

(4) *Neighborhood facilities.* Such facilities may be of either a single purpose or multipurpose nature and be designed to provide health, social, recreational or similiar community services primarily for residents of the neighborhood service area which is either:

(i) A geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances or other local documents as a neighborhood or, in a new community as defined in § 570.403(a), a neighborhood, village or similar geographical designation; or

(ii) An entire unit of general local government or a new community as defined in § 570.403(a) which is under 25,000 population, with the exception of a facility which is designed solely as a communitywide facility in a new community with a currently projected population in excess of 25,000.

(5) *Solid waste disposal facilities,* which are defined as those physical parts of solid waste management systems commencing at and including the site or sites at which publicly or privately owned collection vehicles discharge municipal solid wastes, through the point of ultimate disposal including necessary site improvements and conveying systems, including appropriate fixed and movable equipment including vehicular containers used after the first stage of disposal at transfer stations, but not including the final collections. (i) Such facilities or equipment must be located in or serve areas where other activities included in the Community Development Program are being carried out, such as a NSA. (ii) Equipment and appurtenances used in the initial collection of solid waste are not included among those solid waste disposal facilities eligible for assistance under this Part.

(6) *Fire protection facilities and equipment.* Such facilities and equipment must be located in or serve areas where other activities included in the Community Development Program are being carried out, such as a NSA.

(i) Fire protection facilities are defined as the land and necessary improvements thereto which are necessary for properly housing and storing fire protection equipment and personnel by a fire protection organization, but not including fire fighting schools and their appurtenances.

(ii) Fire protection equipment is defined as the appropriate equipment and apparatus which a fire protection organization requires for carrying out a program for protecting property and maintaining the safety and welfare of the public, including emergency medical aid, from the dangers of fire.

(7) *Parking facilities.* Such facilities must be located in or serve areas where other activities included in the Community Development Program are being carried out, such as a NSA.

(8) *Public utilities,* other than water and sewer, which include:

(i) Facilities necessary for distribution of the utility (but not production or generation, such as electrical generation plants);

(ii) Buildings and improvements that are an integral part of the utility and

are of such a nature that the utility will not function without them; and

(iii) The placing underground of existing or new distribution facilities. Further information regarding the eligibility of assistance to privately owned utilities is set forth in § 570.201(1).

(9) *Street improvements.* Streets, street lights, traffic signals, signs, street furniture, trees, bridges, culverts causeways, curbs, gutters, sidewalks, and other normal appurtenances to streets and structures facilitating the passage on, or usage of, streets, but excluding expressways and other limited access ways and their appurtenances.

(10) *Water and sewer facilities,* including storm sewers, except for sewage treatment works and interceptor sewers which are described as in § 570.206(a)(6). The term "storm sewers" means sewers or other conduits, open or closed, or their appurtenances which collect, transport and dispose of storm waters, surface water, street wash, other wash and ground water or drainage into an existing water course, but excluding domestic waste water and commercial and industrial wastes.

(11) *Foundations and platforms for air rights sites.*

(12) *Pedestrian malls and walkways.*

(13) *Flood and drainage facilities,* in cases where assistance for such facilities has been determined to be unavailable under other Federal laws or programs pursuant to the provisions of § 570.607. The term "flood and drainage facilities" means those undertakings designed to influence or affect the flow in a natural water course (such as a river, stream, lake, estuary, bay, ocean or intermittent stream) and excludes storm sewers.

(14) *Other public facilities and improvements,* not listed in this paragraph, except those described in §§ 570.207 (a)(1) and (f), which are necessary and appropriate to the implementation of the applicant's strategy for neighborhood revitalization or housing.

(i) The applicant shall provide HUD with a description of the proposed facility or improvement and the relationship to applicant's strategy for neighborhood revitalization or housing.

(ii) Among the factors HUD will take into account in authorizing assistance under this paragraph are the amount of benefit to low- and moderate-income persons, the degree of impact on the identified needs of the applicant, and the availability of other Federal funds for the activity.

(d) *Clearance activities.* Clearance, demolition and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD assisted housing units may be undertaken only with the prior approval of HUD.

(e) *Public services.* Provision of public services (including labor, supplies and materials) which are directed toward improving the community's public services and facilities, including those concerned with employment, crime prevention, child care, health, drug abuse, education, welfare or recreational needs, and which are directed toward coordinating public and private development programs. Such services may be provided by State or local governments, quasi-public, private or nonprofit agencies, including, but not limited to, HUD-approved counseling agencies, selected by the applicant for funds provided under this Part. In order to be eligible for block grant assistance, public services must meet each of the following criteria:

(1) Public services are to be provided for residents of neighborhood strategy areas in which block grant assisted physical development activities are being carried out in a concentrated manner. Such public services may be supported with block grant funds during the period which block grant assisted physical development activities are being carried out in a concentrated manner, and may be continued for no more than three years after the completion of such physical development activities. For the purpose of this paragraph:

(i) Physical development activities include only those described in § 570.201 (a) through (d), (f) through (h), and (k), and § 570.202 through § 570.203.

(ii) The phrase "concentrated manner" shall mean that the block grant assisted physical development activities are being carried out within an area in a coordinated manner to serve a common objective or purpose pursuant to a locally developed plan or strategy.

(2) Such services must be directed toward meeting the needs of residents of such areas. Block grant assistance may incidentally be provided for such services only for those who are not residents of areas of concentrated physical development.

(3) A public service must be either (i) a new service, or (ii) a quantifiable increase in the level of a service above that which has been provided by or in behalf of the applicant from local revenue sources or State funds received by the applicant in the twelve calendar months prior to submission of the block grant application. (An exception to this requirement with regard to State-funded services may be made if HUD determines that the decrease in the level of a service was the result of events not within the control of the applicant.)

(4) Federal assistance in providing or securing such public services must have been applied for and denied or not made available pursuant to the provisions of § 570.607.

(5) Public services must be determined by the applicant to be necessary or appropriate to support the physical development activities to be carried out within Neighborhood Strategy Areas. For example, the provision of job training for area residents working on neighborhood revitalization projects would be appropriate to support a concentration of block grant assisted physical development activities being carried out in the area. (i) The specific determination of support for each proposed public service is not required to be included in the application, but the applicant must briefly describe the relationship of the public service to the physical development activities. (ii) HUD will accept the applicant's determination that a public service is necessary and appropriate to support the physical development activities unless there is substantial evidence to the contrary, in which case additional information or assurances may be requested from the applicant prior to a determination of eligibility.

(f) *Interim assistance.* Interim assistance to alleviate harmful conditions where immediate public action is determined by the applicant to be necessary.

(1) The following activities may be undertaken as a prelude to more comprehensive treatment in areas where activities included in the Community Development Program are to be carried out, such as an NSA, in order to hold the area from further deterioration during the interim period:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities and public buildings;

(ii) The improvement of private properties to the extent necessary to eliminate immediate dangers to public health, safety or welfare;

(iii) The establishment of temporary public playgrounds on vacant land; and

(iv) The execution of special garbage, trash, and debris removal, including neighborhood clean up campaigns, but not the regular curbside collection of garbage or trash in an area,

(2) The following activities may be undertaken to the extent necessary to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the applicant determines that an imminent threat to the public health and safety exists requiring immediate resolution of emergency conditions:

(i) the improvement of private properties;

(ii) the repair of streets, sidewalks, utilities, and other public facilities and improvements; and

(iii) the removal of trash and debris, unsafe structures, clearance of streets

including snow removal, and other similar activities.

The chief executive officer, or his designee, shall notify the appropriate HUD Area Office within seven days of determining that a situation exists which poses an imminent threat to the public health and safety and that block grant funds will be used to alleviate the emergency conditions.

(g) *Payment of the non-Federal share* required in connection with a Federal grant-in-aid program undertaken as part of the block grant activities, *Provided*, That such payment shall be limited to activities otherwise eligible under this subpart.

(h) *Urban renewal completion.* Payment of the cost of completing an urban renewal project funded under Title I of the Housing Act of 1949 as amended. Further information regarding the eligibility of such costs is set forth in § 570.801.

(i) *Relocation.* Relocation payments and assistance for individuals, families, businesses, nonprofit organizations, and farm operations displaced by activities assisted under this Part. Further information regarding the eligibility of relocation costs is set forth in § 570.602.

(j) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by program activities assisted under this Part.

(k) *Removal of architectural barriers.* Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned buildings, facilities, and improvements. Further information regarding the removal of architectural barriers is available in publication ANSI A117.1-1961 (R. 1971) of the American National Standards Institute, Inc.

(l) *Privately owned utilities.* Acquisition, construction, reconstruction, rehabilitiation, or installation of distribution facilities and lines of privately owned utilities where necessary and appropriate to implement the applicant's strategy for neighborhood revitalization or housing. Activities may include the placing underground of new or existing distribution facilities.

(1) The applicant shall provide HUD with a description of the proposed activity and the relationship to the applicant's strategy for neighborhood revitalization or housing.

(2) Among the factors HUD will take into account in authorizing such activities are:

(i) The degree of benefit to low- and moderate-income persons;

(ii) The degree of impact on the indentified needs of the applicant; and

(iii) The availability of other Federal funds for the activity.

§ 570.202 Eligible rehabilitation and preservation activities.

Grant assistance may be used for the following activities for the rehabilitation of buildings and improvements:

(a) *Rehabilitation of public residential structures.* Rehabilitation of publicly owned or acquired properties for use or resale in the provision of housing, including:

(1) *Permanent housing units,* both single family and multifamily, for rental or sale; and

(2) *Residential facilities,* including group homes, halfway houses, and emergency shelters. For example, a group home for the handicapped or a temporary shelter for battered women may be provided through acquisition and rehabilitation of properties for those purposes.

(b) *Public housing modernization.* Modernization and modernization planning of publicly-owned low-income housing (excluding, the new construction of office facilities for such public housing).

(N.B. block grant funds may also be provided by an applicant to a public housing agency to be used for otherwise eligible activities, e.g., public services such as security and day care meeting the requirements of § 570.201(e) and planning and policy-planning-management activities under § 570.205 related to public housing improvements.)

(c) *Rehabilitation of private properties.* Block grant assistance may be used for the rehabilitation of privately owned properties. Assistance may consist of:

(1) *Acquisition for the purpose of rehabilitation.* Block grant funds may be used to assist private entities, including those organized for profit and on a not-for-profit basis to acquire, for the purpose of rehabilitation, and rehabilitate properties for use or resale in the provision of housing which, upon completion of rehabilitation, at a minimum will meet the Section 8 Existing Housing Quality Standards set forth in 24 CFR § 882.109, including:

(i) Permanent housing units, both single family and multifamily, for rental or sale; and

(ii) Residential facilities, including group homes, halfway houses, and emergency shelters;

(2) *Rehabilitation financing.* Block grant funds may be used to finance the rehabilitation of privately owned residential, non-residential (excluding industrial properties), and mixed use properties either within areas where activities included in the Community Development Program are being carried out, such as a NSA, or on a spot basis throughout the jurisdiction of the applicant for low- and moderate-income persons. Block grant funds may be used directly to finance rehabilitation, including settlement costs, through the direct use of block grant funds in the provision of assistance, such as grants, loans, loan guarantees and interest supplements, for:

(i) Costs of rehabilitation of properties, including, repair directed toward cure of an accumulation of items of deferred maintenance, replacement of principal fixtures and components of existing structures, and renovation through alteration, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(ii) Refinancing existing indebtedness secured by a property being rehabilitated if such refinancing is necessary or appropriate to the execution of a Community Development Program;

(iii) Measures to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification or replacement of heating and cooling equipment, including the use of solar energy equipment;

(iv) Financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines; or

(v) Costs of initial homeowner warranty premiums for rehabilitation carried out with block grant assistance.

(3) *Materials.* Block grant funds may be used to provide materials, including tools, for use in the rehabilitation of properties either by the property owner or tenant, or where arrangements have been made for the provision of labor, such as through a CETA grant.

(d) *Temporary relocation assistance.* Block grant funds may be used for temporary relocation payments and assistance to individuals, families, businesses, non-profit organizations, and farm operations displaced temporarily by rehabilitation activities assisted under this part. Further information regarding the eligibility of relocation costs is set forth in § 570.602.

(e) *Code enforcement.* Code enforcement in areas where activities included in the Community Development Program are being carried out, such as an NSA, which is deteriorating or deteriorated in which such enforcement together with public improvements, rehabilitation assistance, and services to be provided, may be expected to arrest the decline of the area.

(f) *Historic preservation.* Rehabilitation, preservation, restoration and acquisition of historic properties, either publicly or privately owned, which are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local Inventory of Historic Places, or designated as a State or local land mark or histor-

ic district by appropriate law or ordinance.

Publicly owned historic properties may be assisted, including those properties which are otherwise ineligible for assistance under this subpart. However, eligibility is limited only to those costs necessary for rehabilitation, preservation or restoration of the property and not for conversion or expansion of the property for any ineligible use. For example, a city museum serving low- and moderate-income persons, and listed in the National Register may be restored, but the addition of a new wing on the museum could not normally be assisted, unless it were otherwise eligible for assistance pursuant to § 570.203(b).

§ 570.203 Eligible economic development activities.

Grant assistance may be provided for the following development activities which are not otherwise eligible for block grant assistance, which are directed toward the alleviation of physical and economic distress, or the economic development of a new community as described in § 570.403(a) through stimulation of private investment community revitalization, and expansion of economic opportunities for low- and moderate-income persons, and handicapped persons, and which are necessary and appropriate to implement the applicant's strategy for economic development.

The applicant shall provide HUD with a description of the activity, and of the relationship to the applicant's strategy for economic development. In authorizing activities, HUD will take into account the amount of long-term employment to be generated by the activity accessible to low- and moderate-income persons, the necessity of the activity to stimulate private investment, the degree of impact on the economic conditions of the applicant, and the availability of other Federal funds.

(a) *Acquisition.* Acquisition of real property for economic development purposes;

(b) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements not otherwise eligible for assistance, except buildings and facilities for the general conduct of government which are excluded by § 570.207(a)(1).

For example, in an area with an unemployment rate in excess of the national rate, a manpower training center which is designed to prepare for the work force low- and moderate-income persons who are unemployed or underemployed, may be assisted where it is determined by the applicant that such a facility is necessary and appropriate to support its economic development strategy.

(c) *Commercial and industrial facilities.* Acquisition, construction, reconstruction, rehabilitation or installation of:

(1) Commercial or industrial buildings and structures, including:

(i) Purchase of equipment and fixtures which are part of the real estate, but not personal property; and

(ii) Energy conservation improvements designed to encourage the efficient use of energy resources (including renewable energy resources or alternative energy resources);

(2) Commercial or industrial real property improvements (including railroad spurs or similar extensions).

§ 570.204 Eligible activities by private nonprofit entities, neighborhood-based nonprofit organizations, local development corporations, or small business investment companies.

(a) *General.* Grant assistance may be used by applicants to provide block grant funds for activities designed to implement the applicant's strategies for economic development and neighborhood revitalization set forth in this section to be carried out by a private nonproft entity, a neighborhood-based nonprofit organization, local development corporation, or Small Business Investment Company (SBIC). (1) *Applicant Responsibilities.* Applicants are nonetheless responsible for ensuring that block grant funds are utilized by such entities in a manner consistent with the requirements of this Part and other applicable Federal, State, or local law. Specific requirements governing the administration of the use of block grant funds by such entities are set forth in § 570.612. Applicants will also be responsible for the carrying out of applicable environmental review and clearance responsibilities.

(2) *Eligible Entities.* Entities eligible to receive block grant funds under this section are: (i) A private non-profit entity which is any organization, corporation, or association, duly organized to promote and undertake community development activities on a not-for-profit basis, including new community associations as defined in § 570.403(b);

(ii) A neighborhood-based nonprofit organization which is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood as defined pursuant to § 570.201(c)(4). An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted with block grant funds are to be carried out;

(iii) A Small Business Investment Company (SBIC) which is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; and

(iv) A local development corporation which is an entity organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981); an entity eligible for assistance under section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696), a State development entity eligible for assistance under section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695), or other similar entity incorporated pursuant to Federal, State, or local law.

(b) *Activities eligible under §§ 570.201–570.203, and § 570.205 and § 570.206.* Grant assistance may be provided by an applicant to be utilized by private nonprofit entities, neighborhood-based nonprofit organizations, SBIC's, or local development corporations for activities otherwise eligible for block grant assistance pursuant to §§ 570.201–570.203, § 570.205, and § 570.206. Where such entities use block grant funds to acquire title to facilities, including those described in § 570.201(c) or § 570.203(b), they shall be operated so as to be open for use by the general public during all normal hours of operation. Reasonable fees may be charged for the use of facilities acquired by such entities, but charges, such as excessive membership fees, which will have the effect of precluding low- and moderate-income persons from using the facilities are not permitted.

(c) *Community economic development or neighborhood revitalization activities.* Grant assistance may be provided by an applicant to be used by neighborhood-based nonprofit organizations, SBIC's or local development corporations, but not private nonprofit entities as defined in § 570.204(a)(2)(i), for community economic development or neighborhood revitalization activities which are not otherwise eligible for assistance under this subpart and which are determined by the applicant to be necessary or appropriate to the accomplishment of its Community Development Program. Such activities may include the provision of block grant assistance for use by neighborhood-based nonprofit organizations, SBIC, or local development corporations for:

(1) Assistance through grants, loans, guarantees, interest supplements, or technical assistance to new or existing small businesses, minority businesses and neighborhood nonprofit businesses for

(i) Working capital or operational funds; and

(ii) Capital for land, structures, property improvements, and fixtures;

(2) Capitalization of a SBIC or local development corporation required to

qualify for assistance under other Federal programs;

(3) Assistance to minority contractors to obtain performance bonding; or

(4) Other activities, excluding those described as ineligible for block grant assistance in §§ 570.207(a)(1) and (e), appropriate for community economic development or neighborhood revitalization. Where an applicant proposes to fund such entities to undertake activities pursuant to this paragraph, the applicant shall:

(i) Provide HUD with a complete description of the proposed activity;

(ii) Provide HUD with a description of the relationship of the proposed activity to the applicant's strategy for neighborhood revitalization or econmic development; and

(iii) Receive specific authorization from HUD to undertake the activity.

§ 570.205 Eligible planning, and urban environmental design costs.

Grant assistance may be used for the following planning, design, and environmental costs:

(a) *Development of a Comprehensive Community Development Plan.* For the purpose of this section, the term "Comprehensive Community Development Plan" means a statement or statements (in words, maps, illustrations or other methods of communication) which identify the present conditions, needs and major problems of the applicant's jurisdiction relating to the specific objectives of the Community Development Program as set forth in § 570.2(a) and set forth objectives, policies and standards to guide the development and implementation of such Community Development Program. Activities necessary to develop a Comprehensive Community Development Plan may include:

(1) *Data gathering and studies* necessary for the development of the Plan or its components, including the production of base mapping and aerial photography in coordination with the U.S. Geological Survey, and gathering information from citizens, but excluding the gathering of detailed data and preparing of analyses necessary for the engineering and design of facilities or activities ineligible for block grant assistance pursuant to § 570.207;

(2) *Development of statements of objectives,* policies and standards regarding proposed or forseeable changes in the present conditions or problems affecting the applicant's jurisdiction that are to be addressed by the Community Development Program, including policies which will affirmatively further fair housing;

(3) *Development of a three-year Community Development Plan* which identifies the community development, housing, and economic conditions and needs, demonstrates a comprehensive strategy for meeting those needs and specifies both short- and long-term objectives to guide the applicant's Community Development Program;

(4) *Related planning and urban environmental design acitivities including* the preparation of communitywide plans for land use, housing, open space, recreation, utilities, historic preservation, including surveys of historic properties, economic development, neighborhood preservation, removal of architectural barriers to the elderly and handicapped, and environmental assessment;

(5) *Collection of detailed data,* preparation of analyses, engineering and design of facilities eligible for assistance which can be constructed with block grant funds; and

(6) *Development of codes, ordinances and regulations,* necessary for the implementation of the plan, including local fair housing ordinances.

(b) *Development of a policy-planning-management capacity* so that the applicant may:

(1) Set long-term and short-term objectives related to the community development and housing needs of its jurisdiction;

(2) Devise programs and activities to meet these goals and objectives;

(3) Establish an urban environmental design administrative capacity to use a systematic, interdisciplinary approach to the integrated use of natural and social sciences and environmental design arts in planning and decision making;

(4) Evaluate the progress of such programs and activiites and the extent to which the goals and objectives have been accomplished; and

(5) Carry out the management, coordination and monitoring of the activities and programs that are a part of the applicant's Community Development Program.

(c) *Comprehensive planning activities.* In addition to the planning activities otherwise eligible for assistance under this section, assistance may be also provided for comprehensive planning activities eligible for assistance under the section 701 planning assistance program pursuant to 24 CFR Part 600 provided that such additional planning activities are necessary or appropriate to meeting the needs and objectives of the applicants' Community Development Program. The applicant shall submit a description of the activity to HUD. Among the factors HUD will take into account in authorizing activities will be the impact of the activity on the needs and objectives identified by the applicant, and the availability of other Federal funds.

§ 570.206 Eligible Administrative Costs.

Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities financed, in whole or in part, with funds provided under this Part and housing activities covered in the applicant's Housing Assistance Plan (HAP). Costs incurred in carrying out the program, whether charged to the program on a direct or an indirect basis, must be in conformance with the requirements of Federal Management Circular (FMC) 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments." All items of cost listed in Attachment B, Section C of that Circular (except Item 6, preagreement cost, which are eligible only to the extent authorized in § 570.301(c) are allowable without prior approval to the extent they constitute reasonable costs and are otherwise eligible under this subpart.

(a) *Eligible program administration costs.* Reasonable administrative costs and staff expenses include necessary expenditures for the following:

(1) Salaries, wages and related costs of the applicant's staff and the staff of local public agencies engaged in carrying out the program;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third-party contracts or agreements, including such services as general legal services, accounting services and audit services;

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental and maintenance of office space, insurance, utilities, office supplies and rental or purchase of office equipment;

(5) Costs associated with the administration of individual program activities; and

(6) Reasonable administrative costs relating to the provision of rehabilitation loans under Section 312 of the Housing Act of 1964, as amended, and, where appropriate, administration of an urban homesteading program pursuant to section 810 of the Housing and Community Development Act of 1974, as amended, in accordance with the Community Development Program or housing assistance plan.

(b) *The provision of information and other resources to residents* and citizen organizations participating in the planning, implementation, or assessment of activities being carried out with block grant funds. This may include assistance to neighborhood organizations in areas of concentrated activities or to city-wide organizations conducting training or other activities designed to increase the capability of low- and moderate-income persons to be involved effectively in the development and planning and design of a community development program consistent with the applicable citizen participation requirements set forth in this Part.

(c) *Provision of fair housing counseling services* and other activities designed to further the fair housing provisions of § 570.307(k) and the housing objective of promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of lower-income persons. For example, activities may include informing members of minority groups, and the handicapped, of housing opportunities in non-traditional neighborhoods and providing information about such areas, and assisting members of minority groups, and the handicapped, through provision of escort services to brokers offices in non-traditional neighborhoods.

(d) *Provision of assistance to facilitate performance and payment bonding* necessary for contractors carrying out activities assisted with block grant funds including, payment of bond premiums in behalf of contractors.

(e) *Property management.* Reasonable costs of managing properties acquired with block grant funds.

(f) *Applications for Federal programs,* including the block grant program and UDAG program, may be prepared with block grant funds where necessary and appropriate to implement the applicant's comprehensive strategy for community development. Special provisions regarding letter to proceed for small city applicants are contained in Subpart F.

(g) *Activities to facilitate the implementation of a housing assistance plan* for necessary expenses, prior to construction, in planning and obtaining financing for the new construction or substantial rehabilitation of housing for lower-income persons. Activities may include:

(1) The costs of conducting preliminary surveys and analyses of market needs;

(2) Site and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation, and "sketch drawings," but excluding architectural, engineering, and other details ordinarily required for construction purposes, such as structural, electrical, plumbing, and mechanical details;

(3) Reasonable costs associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 housing assistance payments program pursuant to 24 CFR Parts 880-883; and

(4) Fees associated with processing of applications for mortgage and insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA).

The new construction or direct financing of new construction of housing is not eligible for assistance under this Part, except as described in § 570.207(f).

(h) *Environmental Studies.* The reasonable costs of environmental studies, including historic preservation clearances, necessary to comply with 24 CFR Part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this Part.

§ 570.207 Ineligible activities.

The following is a list of activities which are ineligible for block grant assistance under most circumstances and serves as a general guide regarding ineligible activities. There are several authorities set forth in Subpart C which would permit activities cited in this section to be undertaken with block grant funds. When an activity used as an example in this section meets the requirements for eligibility pursuant to Subpart C, such an activity may be assisted with block grant funds even though it is used as an example of an ineligible activity. The list of examples of ineligible activities is merely illustrative and does not constitute a list of all ineligible activities:

(a) *Public works, facilities and site or other improvements.* The general rule is that public works, facilities and site or other improvements are ineligible to be acquired, constructed, reconstructed, rehabilitated or installed unless they are eligible pursuant to § 570.201(c) or § 570.203(b), or were previously eligible under any of the programs consolidated by the Act (except the public facilities loan program, the model cities program, and as an urban renewal local grant-in-aid eligible under section 110(d)(3) of Housing Act of 1949) and cited in § 570.1(b). Activities undertaken to make facilities and improvements otherwise ineligible for development with block grant assistance accessible to the elderly and handicapped through removal of architectural barriers, or for the purposes of historic preservation pursuant to §§ 570.201(k) and 570.202(f), respectively, are eligible for assistance with block grant funds and are not precluded by this section. Where acquisition of real property includes an existing improvement which is to be utilized in the provision of an ineligible public facility, the portion of the acquisition cost attributable to such improvement, as well as the cost of any rehabilitation or conversion undertaken to adapt or make the property suitable for such use, shall be ineligible. Examples include the following:

(1) *Buildings and facilities for the general conduct of government,* cannot be provided with block grant assistance, such as city halls and other headquarters of government where the governing body of the recipient meets regularly and which are predominantly used for municipal purposes, courthouses, police stations and other municipal office buildings;

(2) *Other facilities and improvements,* which may not be provided with block grant funds unless they are determined by HUD to be necessary and appropriate to the implementation of an applicant's strategy for community development and housing in accordance with §§ 570.201(c)(14) or 570.203(b), include:

(i) *Facilities used for exhibitions, spectator events and cultural purposes,* including stadiums, sports arenas, auditoriums, concert halls, cultural and art centers, convention centers and exhibition halls, museums, central libraries, and similar facilities. For the purpose of this paragraph, libraries (including central libraries in units of general local government under 25,000 population where the criteria set forth in § 570.201(c)(4)(ii) are satisfied), cultural, art and museum facilities which meet the requirements for neighborhood facilities set forth in § 570.201(c)(4) are considered neighborhood facilities and are therefore eligible for assistance.

(ii) *Schools and educational facilities,* (including elementary, secondary, college, and university facilities). For the purpose of this paragraph.

A neighborhood facility, senior center or center for the handicapped in which classes in practical and vocational activities (such as first aid, homemaking, crafts, independent living, etc.) are among the services provided is not considered as a school or educational facility;

(iii) *Airports, subways, trolley lines, bus or other transit terminals,* or stations, and other transportation facilities, (excluding railroad spurs assisted pursuant to § 570.203(c)).

(iv) *Hospitals, nursing homes and other medical facilities.* For the purpose of this paragraph, a neighborhood facility, senior center, center for the handicapped, which provide general health services is not considered to be a medical facility.

(v) *Treatment works for sewage or industrial wastes of a liquid nature,* consisting of the various devices used in the treatment of sewage and commercial and industrial wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, actual treatment facilities, pumping stations, power and other equipment, and their appurtenances. The term "interceptor sewer" means a line which has as its primary purpose the diversion or transmission of sewage from a collection system to a treatment facility, and applies to the following:

(A) In those situations where raw or inadequately treated sewage is being

discharged from an existing public sewer, those sewer lines, whether gravity or force, and any pumping stations or other appurtenances thereto which are necessary to prevent or eliminate the discharge into any waterway of raw or inadequately treated sewage from an existing point or points of discharge in a public system are not eligible. This includes any necessary pumping stations, force mains or other appurtenances thereto; and

(B) In all other situations, the line or lines which divert the flow to the treatment facility from the point of natural discharge of a collection system, where no treatment to be provided, including any necessary pumping stations, force mains or other appurtenances are not eligible.

(b) *Purchase of equipment.* The purchase of equipment with block grant funds is generally ineligible.

(1) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation or use allowances pursuant to Attachment B of OMB Circular A-102 for an otherwise eligible activity is an eligible use of block grant funds. An exception is the purchase of construction equipment which is used as a part of a solid waste disposal facility which is eligible for block grant assistance pursuant to § 570.201(c)(5), such as a bulldozer used at a sanitary landfill.

(2) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, or furnishings or other personalty not an integral structural fixture is ineligible, except when necessary for use by a recipient or its subgrantees in the administration of its Community Development Program pursuant to § 570.205(d), or as a part of a public service pursuant to § 570.201(e).

(c) *Operating and maintenance expenses.* The general rule is that any expense associated with operating, maintaining or repairing public facilities and works or any expense associated with providing public services not assisted with block grant funds is ineligible for assistance. However, operating and maintenance expenses associated with providing public services or interim assistance otherwise eligible for assistance under this Part may be assisted. For example, the cost of a public service being operated with block grant funds in a neighborhood facility may include reasonable expenses associated with operating the public service within the facility, including costs of rent, utilities and maintenance.

Examples of activities which are not eligible for block grant assistance are:

(1) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for which block grant funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs.

(2) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities; and

(3) Expenses associated with provision of any public service which is not eligible for assistance pursuant to § 570.201(e).

(d) *General government expenses.* Expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part. Examples include all ordinary general government expenditures not related to the Community Development Program and not related to activities eligible under this subpart.

(e) *Political activities.* No expenditure may be made for the use of equipment or premises for political purposes, sponsoring or conducting candidates' meetings, engaging in voter registration activity or voter transportation or other partisan political activities.

(f) *New housing construction.* Assistance may not be used for the construction of new permanent residential structures or for any program to subsidize or finance such new construction, except as provided under the last resort housing provisions set forth in 24 CFR Part 43, or pursuant to § 570.204(c)(4). For the purpose of this paragraph, activities in support of the development of low- or moderate-income housing in accordance with an approved Housing Assistance Plan including clearance, site assemblage, provision of site and provision of public improvements and certain housing preconstruction costs set forth in § 570.205(d)(7), are not considered as programs to subsidize or finance new residential construction.

(g) *Income payments.* The general rule is that assistance shall not be used for income payments for housing or any other purpose. Examples of ineligible income payments include the following: payments for income maintenance, housing allowances, down payments and mortgage subsidies.

III. Conforming changes are made to part 570 as follows:

§ 570.403 [Amended]

1. In § 570.403(h), the reference to "§ 570.200(a)" is changed to "§ 570.201(c)(4)."

§ 570.405 [Amended]

2. In § 570.405(b), the reference to "§ 570.200" is changed to "Subpart C."

§ 570.407 [Amended]

3. In § 570.407(d), the reference to "§ 570.200" is changed to "Subpart C."

§ 570.512 [Amended]

4. In § 570.512(e), the reference to "§ 570.200" is changed to "Subpart C."

§ 570.601 [Amended]

5. In § 570.601(b)(4)(iii), the reference to "§ 570.200" is changed to "Subpart C."

§ 570.607 [Amended]

6. In § 570.607, the references to "§ 507.200(a)(8)," "§ 570.200(b)," and "§ 570.200(a)(2)" are changed to "§ 570.201(e)," "§ 570.200(c)," and "§ 570.201(c)(13)," respectively.

§ 570.801 [Amended]

7. In § 570.801(b)(1)(ii), the references to "§ 570.200" are changed to "Subpart C."

§ 570.907 [Amended]

8. In § 570.907(h), the references to "§ 570.200(a)(8)" and "§ 570.200(a)(2)" are changed to "§ 570.201(e)" and "§ 570.201(c)(13)," respectively.

§ 570.909 [Amended]

9. In § 570.909(f)(1)(i), the reference to "§ 570.200" is changed to "Subpart C."

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).)

Issued at Washington, D.C., February 21, 1978.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development.

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WEDNESDAY, MARCH 1, 1978

PART IV



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

■

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Entitlement Grants

[4210-01]

Title 24—Housing and Urban Development

CHAPTER V—OFFICE OF THE ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-471]

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart D—Entitlement Grants

AGENCY: Department of Housing and Urban Development.

ACTION: Final rulemaking.

SUMMARY: HUD is issuing final rules on Subpart D of the regulations for the Community Development Block Grant Program governing applications for entitlement grants. These rules have been revised to:

(1) Ensure that community development programs carried out with block grant funds meet statutory objectives, particularly the objective of providing decent housing, a suitable living environment, and expanded economic opportunities principally for persons of low- and moderate-income;

(2) Enhance the opportunity for citizens to participate in planning, implementing, and assessing the program;

(3) Provide for improved planning which coordinates housing assistance and community development programs and encourages a comprehensive approach to dealing with urban problems; and

(4) Rationalize the application process by reducing the frequency of submission of the Community Development and Housing Assistance Plans to once in three years, making them more substantive documents, and simplifying the annual application.

EFFECTIVE DATE: Unless otherwise indicated in the regulations, these requirements are effective for all applications received in HUD on or after May 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Harriet L. Frank, Beverly M. Harvey, or David J. Pollack, Programs Standards Division Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-6304—755-6306.

SUPPLEMENTARY INFORMATION: On October 25, 1977, proposed revisions to Subpart D were published in the FEDERAL REGISTER (42 FR 56450) for public comment. Interested parties were given until November 25, 1977, to submit written comments. A total of 1,327 letters of comment were received. All comments were considered carefully in revising these rules for final effect. The following summarizes the significant recurrent comments and the changes that were made.

PLANNING CONSIDERATIONS

Public comments tended to support the general approach of encouraging comprehensive planning and use of block grant funds in a concentrated manner, but criticized the specific provisions for being too restrictive. Comments by local officials and public interest groups tended to be in agreement in both areas. Cities which liked the approach felt that it would facilitate longer range planning and make for more effective programming. Comments from public interest groups stated their expectation that these provisions would result in more funds being targeted to lower-income neighborhoods.

The specific criticisms that were made were as follows. Many commenters felt that the rules were too prescriptive in that they appeared to make comprehensive neighborhood revitalization programs mandatory. They concluded that all block grant recipients had to use funds in a concentrated manner, and that scattered programs were not permitted even where they were appropriate for the particular community and benefited low- and moderate-income persons.

The definition of comprehensive neighborhood revitalization areas was criticized by both local government officials and public interest groups. The commenters objected particularly to the requirement that such areas be of manageable size and condition and to the three to five year time limit for substantially meeting the housing and community development needs of the area. They stated that this would prevent localities from undertaking comprehensive programs in the worst areas and that it would require designating areas that were to small too permit effective citizen participation or delivery of services.

Other recurrent comments were:

(1) That comprehensive programs should not be limited to residential areas—this comment was made by numerous localities that did not meet the UDAG distress criteria; and

(2) That this appeared to require an additional plan and the relationship of that to the three-year community development plan was not clear.

This section has been substantially revised in response to the comments. Section 570.301(a) is now headed "Comprehensive Strategies." It states the basic planning efforts required of all applicants for block grants and explicitly recognizes that each applicant has discretion to develop strategies appropriate to local needs and conditions. Paragraph (b) is headed "Coordination of Programs" and describes the block grant funded activities and related HUD programs which may be undertaken where community development activities are being carried out in a concentrated manner and encourages localities to designate appropriate areas for concentrated action.

Paragraph (c) is headed "Neighborhood Strategy Area" which is the term being adopted to refer to areas where concentrated programs are being carried out. This is more flexibly defined than the "Comprehensive Neighborhood Revitalization Area" term which it replaces. It eliminates the three to five year time limit. Rather, it provides that the size of the area should take into account the conditions and the extent of resources to be provided so that substantial long-term improvements can be accomplished within a reasonable time. The size and condition of the areas to be selected are at the discretion of the applicant so long as the resources provided are sufficient to truly constitute a concentrated approach to meeting the needs of designated areas.

There was considerable favorable comment on the multiyear programming provisions which have been retained. There were no other significant comments.

PROGRAM BENEFIT TO LOW- AND MODERATE-INCOME PERSONS

These provisions received extensive comment from a wide range of local governments, public interest groups, and individuals. In general, local government officials objected to the rule. While most agreed that the principal benefit of the block grant program should be for low- and moderate-income persons, they felt that the rule as proposed was too restrictive, that it would limit local initiative and flexibility, and would create paperwork and administrative burdens. These communities objected both to the overall percentage requirement for the use of funds for the benefit of low- and moderate-income persons, and to many of the detailed provisions such as the definition of low- and moderate-income service areas and the limitations on the kinds of projects which could be carried out as exceptions to the low- and moderate-income benefit provisions.

On the other hand, many groups endorsed the rule. These commenters felt that a higher proportion of funds should be used for the benefit of low- and moderate-income persons, and that some of the detailed provisions should be tightened to prevent abuse.

The final rule continues the emphasis on principally benefitting low- and moderate-income persons. The rule provides that an application shall be presumed to benefit low- and moderate-income persons where the applicant proposes that not less than 75 percent of the program funds be used

for projects and activities which benefit low- and moderate-income persons as defined in the rule. Such a presumption, while not determinative, shall relieve the applicant, in the absence of substantial evidence to the contrary, from any examination by HUD prior to funding to determine whether or not the program as a whole principally benefits low- and moderate-income persons. All other applications shall be subject to examination by HUD prior to funding to determine whether they principally benefit low- and moderate-income persons. In making this determination, HUD will consider the information in the applicant's community development plan, the specific needs of lower-income persons in the applicant's jurisdiction, and past expenditure patterns in areas having concentrations of lower-income persons. All programs, whether entitled to the presumption or not, shall be subject to monitoring by HUD to ensure that low- and moderate-income persons are principally benefitted by the program as a whole.

The reasons for adopting this rule are as follows. It was decided that it was necessary to require in the regulations for the first time that the block grant program should principally benefit low- and moderate-income persons, and to provide clearer and more specific rules and review standards to assure that this occurred. None of the alternative approaches suggested appeared workable; they did not provide a standard which could be administered in a fair and consistent fashion. Yet it was recognized that a rigid percentage requirement would unduly limit applicants. It was therefore decided to adopt a modified rule which provides a reasonable measure of flexibility and responsiveness to varied local circumstances.

The comments made on the specific provisions, and the changes made in response to those comments are as follows:

GENERAL

Section 570.302(a) is now called Statutory Provisions and cites the statutory sections on which this rule is based. Section 570.302(b) is now called General Requirements and contains the rules formerly in paragraph (a), revised as follows:

Paragraph 570.302(b)(1) states that all projects and activities must either principally benefit low- and moderate-income persons, or prevent or eliminate slums and blight, or meet other community development needs having a particular urgency. This is the rule which was originally published as 570.303(b)(5) in the FEDERAL REGISTER of February 2, 1977. It is based on the maximum feasible priority language of Section 104(b)(2) of the Act which set out the three categories of projects for which block grant funds could be used.

Paragraph 570.302(b)(2) states that the program as a whole shall principally benefit low- and moderate-income persons. Paragraph 570.302(b)(3) contains the provision that programs in which at least 75 percent of the funds are budgeted for projects defined as principally benefitting lower-income persons shall be presumed to meet this requirement, absent substantial evidence to the contrary.

Numerous commenters who objected to the percentage requirement also questioned the legal basis for this rule. These commenters noted that the statute does not have any quantitative standard for benefits to low- and moderate-income persons and simply requires that applicants give maximum feasible priority to activities which benefit low- and moderate-income persons or prevent or eliminate slums and blight. They therefore questioned HUD's authority to give greater weight to one category of project. While this view has been fully considered, it was concluded that the requirement is statutorily permissible in terms of the specific programmatic requirements and the stated primary objective of the Act.

Subparagraph 570.302(b)(3) also provides that the determination of the amount of funds benefitting low- and moderate-income persons will be based on the amount of program funds to be available during the three year period covered by the applicant's Community Development and Housing Plan. This substitutes for the provisions in Section 570.302(d)(5) of the proposed rules regarding adjusting the amount of funds which must be used for projects which principally benefit low- and moderate-income persons by the amount by which such expenditures have exceeded 75 percent in previous years. The reason for this is to facilitate long range planning by providing an assured source of funding for projects which otherwise meet these requirements. It is noted that Section 570.304(c) requires a three year activity summary which describes the projects to be carried out over a three year period, their locations and the amounts of block grant and other funds to be provided. The new application forms to be used effective August 1, 1978, will clearly display the information required to make these determinations on a three year basis and to hold cities accountable for using program funds in accordance with the Three-Year Plan.

Subparagraph (4) is new and responds to the numerous comments regarding the paperwork and other difficulties anticipated in order to comply with this rule. Many commenters noted that census data is now out of date and in many cases no longer accurately represents existing conditions; that neighborhoods or other geographic areas to be served by particular projects are generally not coterminous with census tract boundaries; and that the effort to qualify areas for assistance could lead to gerrymandering and deflect attention from the quality of programming. In response, this new provision states that the applicant's determinations that projects principally benefit low- and moderate-income persons may be based on a variety of data including 701 planning studies, local surveys, etc.; and that the applicant shall maintain such documentation in its files. Where at least 75 percent of program funds are budgeted for projects which principally benefit low- and moderate-income persons, HUD will accept the applicant's determinations; otherwise, HUD will examine the proposed activities to ensure that the programs as a whole principally benefits lower-income persons. HUD will monitor the applicant's performance to assure that the projects being carried out with block grant funds principally benefit low- and moderate-income persons. Our intention is to carry out the statutory objective of benefitting low- and moderate-income persons in a strong and committed fashion. At the same time, we intend to be practical and flexible regarding documentation. Applicants need to know the income characteristics of areas within their jurisdictions in order to design programs to meet statutory requirements, and documentation reflecting that knowledge must be maintained in the applicant's files. However, we do not intend that applicants be restricted, in their programing by obsolete data or irrelevant geographic boundaries. Rather, we expect that applicants will be able to make a reasonable case that projects carried out with block grant funds principally serve low- and moderate-income persons based on pertinent generally available information.

Subparagraph (5) contains the provision for benefitting low income persons which was previously in § 570.302(a)(2). Numerous comments regarding this were made by public interest groups concerned with the needs of lower income persons. Many felt that a more specific rule is needed which would require that expenditures for low-income, as compared with moderate-income persons, be in proportion to such persons' share of the low- and moderate-income population. These commenters expressed concern that cities would neglect the neediest parts of their population in favor of those relatively more effluent. These comments were considered at length and it was decided that a quantified requirement for benefits to low-income persons should not be adopted. The reasons are that there is no evidence that there is a significant pat-

tern of neglect of low-income persons in favor of moderate-income persons, who are defined as members of households whose income does not exceed 80 percent of the SMSA or state nonmetropolitan median, and that an additional quantitative standard would greatly complicate local planning and programing. However, the words "which can be carried out with available resources" were deleted since many read this as diluting the commitment to assuring that the needs of low income persons were addressed. This section provides a clear basis for dealing with abuses and HUD intends to enforce it.

REVIEW GUIDELINES

The provisions in paragraph (c) are new and indicate how the modified standard will be administered. Subparagraph (1) provides that, absent substantial evidence to the contrary, HUD will presume that an application principally benefits low- and moderate-income persons where at least 75 percent of the program funds are for projects which meet the definitions of principally benefitting lower-income persons. Subparagraph (2) provides that HUD will subject all other applications to an examination prior to funding to determine whether the activities proposed constitute a program which principally benefits low- and moderate-income persons, and indicates some of the factors that shall be taken into account in making that determination.

PROJECTS WHICH BENEFIT LOW- AND MODERATE-INCOME PERSONS

These provisions, which were previously in the proposed paragraph 570.302(b), received the greatest number of comments made on the specific provisions of the general rule.

It is apparent from these comments that most of the local governments that objected to the overall percentage requirement were particularly troubled by the combination of that requirement with the tight definitions of projects which would be credited toward meeting it. These commenters stated that the proposed rules would impede and even prevent effective programing. The specific comments were: Numerous local governments, particularly cities in the south and west, and urban counties, stated that they had no areas, or very few areas, in which low- and moderate-income persons constituted a majority. Others felt that the definitions of projects principally benefitting low- and moderate-income persons were too restrictive and would limit comprehensive programming in certain transitional areas in which funds could be used to great effect.

Comments were made that targeting funds into areas with a majority of low- and moderate-income residents would work against the legitimate, statutory objective of spatial deconcentration, of minorities and low- and moderate-income persons; that exceptions should be made for areas that are economically diverse when block grant funds were being used to promote such diversity; and that provision should be made for activities which encourage the provision of subsidized housing for low-income persons outside areas of lower-income concentration. Some commenters questioned the definitions of low- and moderate-income, and proposed alternatives such as defining them as 100 percent and 120 percent of the Standard Metropolitan Statistical Area (SMSA) or state nonmetropolitan median incomes, or having a national standard, or defining them in comparison to the applicant's median income. Some proposed that low- and moderate-income areas be defined as areas with concentrations of lower income persons exceeding the average of such persons in the SMSA or the community. Some suggested that the absolute number of low- and moderate-income persons to be served be considered, not only the proportion of such persons in a given area, since they felt that the proposed rules would prevent benefits to large numbers of lower income persons who reside in areas where they do not constitute a majority.

On the other hand, numerous public interst groups concerned with lower income persons felt that the rule was too permissive since it counted as a low- and moderate-income benefit project one which benefitted as much as 49 percent higher income persons. Many felt that the cost of each project should be prorated to the extent that it benefits low- and moderate-income persons. Some felt that low- and moderate-income projects should be limited to those which provide direct benefits to low- and moderate-income persons. They objected to including projects which benefitted geographic areas where higher income persons would also receive benefits. Finally, a number of commenters felt that the provision that projects defined as principally benefiting low- and moderate-income persons must meet identified needs of low- and moderate-income persons should be strengthened and specific standards for meeting it be provided.

After careful consideration of the full range of comments, it was decided that this section should be modified in order to provide needed flexibility and responsiveness to varied local circumstances and permit effective programming. We could not agree that projects that benefit low- and moderate-income persons should be limited to projects which provide direct benefits to such persons. Direct benefits consists of rehabilitation financing and public services. It is noted that many lower-income persons could not afford to repay loans or pay increased rents, although lower-income homeowners may benefit from direct grants, and, therefore, could not directly benefit from most rehabilitation programs. Public services are limited by the Act to areas in which physical development activities are being carried out in a concentrated manner and where the public services are necessary to support such physical development activities. As a practical matter, it is, therefore, generally not possible to use the block grant program exclusively for provision of benefits directly to lower-income individuals. Furthermore, restricting local programming in such fashion would effectively prevent cities from providing needed facilities such as neighborhood facilities, pools, playgrounds, to the majority of lower-income persons, since some higher-income persons might also benefit.

The definitions of projects which benefit low- and moderate-income persons have been revised as follows: First, the requirement that such projects must be designed to meet identified needs of low- and moderate-income persons as described in the applicant's Community Development Plan has been moved to the beginning for greater emphasis. The distinction between projects benefitting low- and moderate-income areas and projects benefitting low- and moderate-income persons has been eliminated because it proved to be confusing. Rather, the categories of projects now include projects with income eligibility requirements that limit the benefits to low- and moderate-income persons, and projects which do not have income limits but which principally benefit low- and moderate-income persons in an area delineated by the applicant. The rule makes clear that such areas need not be coterminous with census tracts, but rather may consist of neighborhoods or other locally defined areas to be served by a given project.

The category of projects benefitting low- and moderate-income persons in delineated areas has been expanded to include areas with less than a majority of low- and moderate-income persons for localities whose low- and moderate-income residents are dispersed and where it is not possible or appropriate to target funds to areas where low- and moderate-income residents constitute a majority.

Economic development projects are now described as projects designed to create permanent employment for low- and moderate-income persons. Projects to attract or retain commercial facilities in lower income neighborhoods are now listed as an example or projects benefitting delineated areas.

Removal of architectural barriers is added to the list of projects generally assumed to benefit low- and moderate-income persons in response to a number of comments and questions.

Projects Which Prevent or Eliminate Slums and Blight

Paragraphs (e) and (f) now contain the rules formerly listed under the heading of "Exceptions" in paragraph (c). The new headings conform to the three categories of activity in the maximum feasible priority language of the Act.

Local government officials who commented on these provisions generally regarded them as too restrictive. Many stated that the overall percentage requirement for the use of funds was sufficient to assure principal benefit to low- and moderate-income persons, and that the activities permitted with the remainder of the grant should therefore be more flexibly defined. Specific comments included the following: Economic development activities should not be limited to localities meeting the distress criteria for Urban Development Action Grants since many other cities are distressed relative to their regions, or have distressed areas within their jurisdiction; the slum and blight category should include commercial revitalization; the limit on such activities should be 33⅓ percent rather than 25 percent; the rule effectively prevents most historic preservation activities; the category of "elimination of detrimental conditions" should be expanded to include activities such as relocation and site improvements.

Certain groups which commented opposed the provision permitting activities to attract higher income residents. They were concerned that such activities would displace lower income persons and felt that it was inappropriate to use block grant funds to aid higher income persons. Many recommended that where block grant funds were used to encourage construction or rehabilitation of higher income housing, the rules require that a specified proportion of the housing units, such as 20 percent, be reserved for Section 8 assistance.

There were numerous comments about urban renewal completion. A number of local governments recommended that there be no limit on the use of funds for this purpose and that cities should be encouraged and aided in completing such projects. It was also recommended that completion of urban renewal projects which principally benefit low- and moderate-income persons should be credited toward meeting the 75 percent requirement.

The following changes have been made in response to these comments. The first category has been redefined as projects in areas which meet the definition of an urban renewal or similar area under state law and in which the applicant undertakes a comprehensive program to remedy the conditions which qualify the area. The reason for redefining the concept of comprehensive slum and blight prevention and elimination projects was to provide a definition that was more flexible and easier to understand and apply. It was observed that the previous definition led to the conclusion that comprehensive neighborhood programs were permitted only in areas which were not predominantly low- and moderate-income and that readers were uncertain as to how extensive the deterioration had to be in order to qualify an area. This category now includes commercial as well as residential areas, as numerous cities recommended.

The second category, elimination of detrimental conditions, has been expanded to include relocation, since acquisition and demolition generally necessitate relocation payments and assistance. It has also been expanded to include historic preservation since that is a statutory objective and we agree that the previous provision was too limited. However, we did not add site improvements since it was our specific intention to prevent use of block grant funds for public improvements and facilities in areas which were neither predominantly low- and moderate-income nor blighted. Provision of often costly improvements and facilities on a scattered basis not part of a strategy to aid low- and moderate-income persons or prevent or eliminate slums and blight is generally not consonant with the objectives of the Act and is therefore deliberately precluded by this rule.

The provision on completion of Federally assisted urban renewal projects has been clarified to indicate that projects which principally benefit low- and moderate-income persons are counted as such. Activities necessary to complete renewal projects which do not principally benefit lower-income persons shall not be included in those activities benefitting lower-income persons, but shall be recognized as activities which prevent or eliminate slums and blight.

The category of activities which may be undertaken only by distressed cities has been eliminated. Regarding economic development, it was decided that limiting such activities to distressed cities would be inappropriate for certain cities that did not meet the Action Grant distress criteria but nonetheless had a real need to enhance their economic viability. The restriction had been proposed in order to avoid the use of block grant funds for commercial or industrial developments in cities which were relatively affluent and had strong economies, where the economic development activities would not principally benefit low- and moderate-income persons. We have concluded that we can accomplish the same result in a fashion more responsive to individual city conditions by applying the "plainly inappropriate" criteria for disapproval of applications in § 570.311 of these regulations. The special category of attracting higher income residents has been eliminated altogether. Attracting higher income residents is a statutory objective and applicants can develop strategies toward that end. Such strategies may be accomplished through projects which principally benefit low- and moderate-income persons, or through slum prevention and elimination activities permitted by these regulations; they do not constitute a separate category of activity and are no longer separately described.

Projects Designed To Meet Needs Having a Particular Urgency

Some commenters stated that urgent needs should not be subject to the limitation on expenditures for projects and activities not benefitting low- and moderate-income persons. Others felt that the requirement that the needs must be of recent origin should be eliminated. A number of commenters wanted specific criteria for determining that other sources of funding were not available, and for determining that the applicant could not finance the activities on its own.

We considered the comments and decided not to change this section. We feel that urgent needs should be subject to the same limitation as activities to prevent and eliminate slums and blight since that is consonant with the primary objective of the Act. The requirement that the need be of recent origin is consistent with current policy, which has proved workable. If a need is not of recent origin, and a community has not acted to address it, the urgency of the need becomes questionable. We considered developing specific criteria for determining local capacity to finance and availability of other resources and found this effort impractical due to the great range of circumstances which would have to be provided for.

Computing Benefits to Low- and Moderate-Income Persons

There were numerous comments from public interest groups objecting to the credit for previous expenditures exceeding 75 percent of the grant for the benefit of low- and moderate-income persons. That provision has been eliminated. The other recurrent comment was that urban renewal loan repayment should not be excluded from the computation of funds used for the principal benefit of such per-

sons. We did not accept that because of the large amount of outstanding loans with Federal guarantees and the importance we attach to assuring that adequate resources are available for repayment.

The substantive changes in this section are as follows: A provision has been added, stating that where a project consisting of several activities does not principally benefit low- and moderate-income persons, but a particular activity does, the applicant may consider credit that activity as a low- and moderate-income benefit. This is intended to encourage programming for such persons. Finally, a provision has been added that the nature and result of a project will determine whether a project benefits low- and moderate-income persons, not simply geographic location. This is to assure attention to the purpose and substantive effect on such persons.

Mitigating Adverse Effects

Numerous comments were made expressing concern about anticipated displacement as a result of block grant funded activities and recommending stronger provisions. A number of commenters recommended that HUD require a specific relocation plan to be submitted by each applicant. Others recommended that HUD prescribe the types of actions applicants would have to take to mitigate adverse effects, for example, instituting rent controls in areas where block grant funds were used for rehabilitation of rental properties. Some felt that the rules should prohibit displacement, not simply require that the effects of such displacement be mitigated. On the other hand, some commenters felt that this provision worked against spatial deconcentration objectives, since it appeared to require that persons stay in the same neighborhood in all cases.

The Department is most concerned about the problems of displacement of lower income persons as a result of neighborhood change, and is considering what additional programs and policies are required to deal with this. Nevertheless, we concluded that it would not be appropriate or effective to make these rules more restrictive. Our experience in predecessor categorical grant-in-aid programs was that specific relocation plans did not prevent displacement nor assure that relocation was carried out in a humane fashion due to:

(1) The time that elapsed between development of the plans and actual displacement;

(2) The difficulty of controlling relocation workload and provision of new housing resources; and

(3) Other factors.

Moreover, the context of a block grant program, including a statutory 75-day review period, does not lend itself to review of detailed relocation plans.

Regarding steps to be taken to mitigate adverse effects, we feel that this is best left to the applicant at the present time since local conditions vary and steps which may be workable and effective for some could be damaging to others. Nor did we feel that we could prohibit displacement entirely, since in many cases that would prevent neighborhood revitalization activities. Rather than adopting these recommendations, the Department will rely on monitoring of programs and working directly with local governments to assure that programs are carried out in a manner which minimizes hardships to lower income persons, and assists them to remain in existing neighborhoods, if that is what they prefer.

Citizen Participation

As with to the provisions on program benefit to low- and moderate-income persons, the proposed citizen participation provisions received extensive comment from local governments, public interest groups, and individuals. Again, there was a clear demarcation between the comments of local government officials and their associations on one hand, and the comments of legal aid societies, neighborhood organizations, civil rights organizations, and other public interest groups on the other. In general, the former groups objected to the proposed rule, primarily due to the increased level of detail of the requirements and the additional administrative expense which would be involved in implementing them. In contrast, the public interest groups generally supported the rule as a marked improvement over previous regulations, but many wanted it strengthened.

Comments made on the specific provisions, and the changes made in response to those comments are as follows:

§ 570.303(a)—GENERAL

Several commenters expressed concern that the regulations create expectations among citizens that they can restrict the local government's authority over the program, while the statute expressly reserves that authority. In order to emphasize that citizens must be afforded an opportunity to provide advice to the local government regarding the program, but they do not have the power under these regulations to veto the elected government's decisions, the first sentence of paragraph 570.303(a) has been revised to state that the applicant shall provide citizens with an adequate opportunity to participate "in an advisory role" in planning, implementing, and assessing the program.

§ 570.303(b)—WRITTEN CITIZEN PARTICIPATION PLAN

The proposed regulations stated that the applicant's written citizen participation plan had to be followed beginning with the preparation of the first application to be submitted to HUD on or after the effective date of the regulations. Many comments were made that a longer lead time was needed in which to prepare the plan, particularly since another provision requires citizen involvement in the plan's development. To help ensure the adoption of well-devised plans, the final rule states that the plan shall go into effect no later than August 1, 1978.

Many commenters recommended requiring submission of the plan to HUD for review. After careful consideration, it was decided that submission of citizen participation plans by all communities should not be required, principally because HUD does not have sufficient staff to review adequately all of the thousands of plans. It is felt that HUD's limited staff resources can be used more effectively in resolving complaints and findings regarding citizen participation.

§ 570.303(c)—STANDARDS OF PARTICIPATION

A large number of public interest groups recommended that citizen participation structures be required at both the neighborhood and community-wide levels. The proposed regulations called for a citizen participation process at both levels. The term "process" has been retained in the final rule in recognition of the diverse size and political traditions of program applicants. The inflexibility of requiring all communities to established formal citizen participation structures, regardless of the effectiveness of existing arrangements, was also considered. We believe that the exact form of the citizen participation process is not critical; what is important is that the process meet prescribed standards.

Many smaller communities complained that a two tier process of participation (i.e., communitywide and neighborhood) would be burdensome and of no value in smaller communities. They pointed out that the small size of the community ensures the communitywide process will be effective in informing residents about the program and providing them the opportunity to become involved. In response to these comments, the final rule requires only a communitywide process for applicants with populations under 50,000.

A large number of comments were received regarding the specific standards of participation enumerated in paragraph (c). As a result of those comments, four changes have been made. First, the standards in

§ 570.303(c)(1)(ii) and § 570.303(c)(1)(vi) of the proposed rules have been combined and placed in § 570.303(c)(2). This has been done to make it clearer that applicants are not required to establish citizen advisory committees, though they may choose to do so. Second, the segments of the population which must be involved in the citizen participation process have been expanded to include the business community and civic groups who are concerned about the program. These were added in recognition of the important roles business and civic groups play in community development. Third, "substantial" representation of low- and moderate-income citizens and members of minority groups on citizen advisory committees the applicant chooses to establish or recognize has been substituted for "adequate" representation of such persons to emphasize the importance of close coordination between the applicant and the intended primary beneficiaries of the program. Finally, § 570.303(c)(1)(iii) of the proposed rules has been revised in the final rule (§ 570.303(c)(3)) to state that the applicant shall make reasonable efforts to ensure continuity of involvement by citizens or citizen organizations throughout all stages of the program. The proposed rule said there shall be continuity of participation by specific citizen representatives. This change was made because it is not our intent to encourage applicants to treat certain citizens preferentially, which is the interpretation several commenters placed on the previous language. Rather, it is out intent to foster the high quality of citizen involvement which can only occur when the same citizens or citizen organizations remain involved in the process throughout all stages of the program, from initial planning through assessment of performance.

§ 570.303(d)—SCOPE OF PARTICIPATION

A number of local government officials objected to the requirement in the second sentence of this paragraph that citizens must be involved in the development of the citizen participation plans. Some objected because they felt it was a contradiction in terms to say that citizens should be involved in planning a process to involve citizens. Others objected on the grounds that the requirement implies that communities have to start all over again in developing a citizen participation process, thereby ignoring processes developed locally over the last three years. We disagree with these conclusions. While some entitlement communities do not presently have written citizen participation plans, all have existing citizen participation mechanisms of one type or another. These can be used to involve citizens in developing a written plan. With regard to the other objection, no community should have to start all over again in developing a citizen participation process; while most communities will have to modify their existing processes by some degree, these regulations provide wide latitude with regard to the form of the citizen participation process and, therefore, should accommodate existing forms of citizen involvement.

Several commenters requested clarification as to what is meant by citizen involvement in program implementation. In response, subparagraph (2) has been revised to state that, at a minimum, this includes involvement of citizens in an advisory role in policy decisions regarding program implementation. An example is citizen advice on the degree of subsidy to be provided in connection with rehabilitation loans to families in different income ranges. Day-to-day operational decisions are not included in the category of policy decisions. This subparagraph also suggests other roles citizens may play in program implementation.

Subparagraph (3), which has been renamed "Assessment of performance," has been revised to more closely reflect new statutory intent. A new provision has been added regarding the handling of citizen comments on the applicant's community development performance. The provision states that the applicant shall include in its annual performance report copies of comments submitted by citizens regarding the applicant's community development performance, the applicant's assessment of such comments, and a summary of any actions taken in response to the comments received. Submission of the citizen comments are required by the statute. Submission of the other two items are needed to assist HUD in evaluating the citizen comments as part of the overall assessment of the applicant's performance. Where appropriate, this additional information in the annual performance report will trigger more detailed monitoring of the applicant's performance.

§ 570.303(f)—CONSIDERATION OF OBJECTIONS TO APPLICATIONS

The material in this paragraph was contained in paragraph 570.309(b) of the proposed regulations. It has been moved because it deals with an important element of citizen participation. One minor change has been made. In order to better ensure that citizen objections will be considered during the application review period, HUD will not approve an application until at least 45 days after its receipt. Previously, the minimum review period was 30 days.

§ 570.303(g)—COMPLAINTS

Many comments from local governments expressed concern that the provision in the proposed regulations flatly requiring written responses to citizen complaints within 15 working days provided insufficient time in which to prepare responsive answers to complex complaints. We agree more flexibility is needed and, therefore, the final rule provides that the applicant shall make "every reasonable effort" to provide written responses within 15 working days.

§ 570.303(h)—TECHNICAL ASSISTANCE

Numerous local governments objected to the proposed technical assistance provisions. They objected to losing control over determining the amount of money to be spent on technical assistance, the persons to provide the assistance, and the groups to receive it. On the other hand, public interest groups strongly supported the technical assistance provisions. After careful consideration of all comments, the rule was revised to provide that the level and type of assistance shall be determined by the applicant. It was also revised to provide that technical assistance "should" be provided by specialists jointly selected by the applicant and the organizations and groups assisted. Such joint selection is not mandatory.

§570.303(i)—ADEQUATE INFORMATION

A number of public interest groups recommended that applicants be required to publish line item reports of planned activities 60 days prior to final public hearings on the application. While this proposal was not adopted, new subparagraph (4) has been added which requires applicants to make copies of the proposed application, as well as copies of the citizen participation plan, the approved application, and the annual performance report, available at locations conveniently located for persons affected by the program and accessible to the handicapped.

Many commenters objected to the provision in the proposed rule that copies of a wide range of program records and information be put on display in one or more locations reasonably accessible to persons affected by the program. They were concerned with the cost involved in putting all the material on display and keeping it updated, and they questioned the advantage to be gained. In response, the rule has been changed to require copies of the documents of most interest to citizens (i.e., the citizen participation plan, the proposed and approved applications, and the annual performance report) be placed at locations convenient to persons affected by the program, but that all other documents relevant to the program be made available for citizen review upon request at the applicant's office (e.g., City Hall) during normal working hours.

The material in subparagraph (3) on public availability of the application was contained in paragraph 570.309(a) of the proposed regulations. It has been moved because of its relevance to the citizen participation process. The previous requirement for publication of a notice stating the application has been submitted to the A-95 clearinghouse and is available to interested parties upon request, has been deleted. That notice is no longer needed in light of the new requirement for a public hearing prior to action by the local governing body authorizing the submission of the application to A-95 clearinghouses.

Numerous local governments objected to the provisions in the proposed regulations on meetings. Many thought it was unreasonable to hold applicants responsible for assuring citizen organizations hold public meetings. Some questioned the need for minutes or summaries of meetings held to provide information and respond to questions about the program. Others were concerned with the expense involved in obtaining the minutes or summaries. On the other hand, citizen groups favor forums at which information about the program is provided and where questions can be asked. After considering the full range of comments, it was decided to delete the requirement on meetings and to revise the paragraph on public hearings, to provide for responses to citizen proposals and questions at the hearings. The provisions in the final rule on providing adequate information to citizens, together with the answering of citizen questions at public hearings, will provide citizens the opportunity to become informed about the program.

§ 570.303(j)—PUBLIC HEARINGS

A number of commenters noted that the Act does not require public hearings on program progress and performance, but only to obtain the views of citizens on community development and housing needs. While that is true, we believe it is consistent with the Act and reasonable to require the holding of public hearings on performance. The Act requires citizens be encouraged to submit views and proposals, and that they be provided the opportunity to participate in developing the application, that they be provided the opportunity to submit comments on the applicant's performance In order for citizens to participate intelligently in developing the application, including submitting proposals for activities, and to intelligently comment on the applicant's performance, they must be afforded the opportunity to find out how well previously approved activities are doing.

Subparagraph (3) on notices of public hearings has been revised in response to numerous comments from local governments on the high cost that would be involved in complying with the proposed rule. The final rule requires publication of the notice in the nonlegal section of newspapers of general circulation, including minority and non-English language newspapers of general circulation where they exist. While the rule no longer requires publication of the notice in neighborhood newspapers serving low- and moderate-income persons, applicants are required to make reasonable efforts to provide the notices, in the form of press releases, to those newspapers. The information required to be placed in the notice has been shortened to include the date, time, place, and procedures of the hearings, and the topics to be considered.

§ 570.303(k)—BILINGUAL

Many local government officials questioned whether the benefit to be derived from translating major program documents justified the expense. To keep costs down, the final rule provides that "summaries of basic information" rather than "major documents" be produced for non-English speaking persons. This will still provide non-English speaking citizens with information about the program and how it affects them, but does not require that all regulations, forms, and other major documents be translated to other languages.

§ 570.303(l)—CONTINGENCY AND LOCAL OPTION ACTIVITIES

This paragraph has been expanded to cover citizen participation in the selection of local option activities. While paragraph (d) on scope of participation already states that citizens shall be involved in subsequent amendments and other changes to the application, it apparently was not clear that "other changes" was intended to include the selection of local option activities. The expansion of this paragraph now clarifies that citizens must be involved in selecting local option activities.

§ 570.303(m)—PROGRAM AMENDMENTS

This new paragraph has been added to emphasize that citizen participation is required with respect to program amendments. It provides that where prior HUD approval of the amendment is required, as specified in § 570.312, public hearings must be held on the amendment. All other amendments, except those involving disaster activities, also require citizen participation, but the specific nature of the participation is left to the discretion of the community.

COMMUNITY DEVELOPMENT AND HOUSING PLAN

Comments on the new application requirements were generally favorable and many commenters, including local officials as well as public interest groups, expressed the view that these provisions would encourage more effective programing. However, numerous local officials expressed concern that this would greatly increase the paperwork requirements and result in a boon to consultants. These comments were considered carefully and all proposed requirements reviewed to assure that those retained served a positive purpose. These provisions do not require lengthy statements presented in technical terms. They do require a concise but clear and explicit statement of the applicant's housing and development strategy that is comprehensible both to citizens and HUD and that is relevant to the needs of the applicant.

The other major concern about this section as a whole was about the timing of implementation, and coordination with the Housing Assistance Plan. The effective date of these requirements has accordingly been changed to August 1, 1978, which is the date the new three year housing program aspect of the Housing Assistance Plan requirements will become effective as well. The effect of this change is the entitlement grant recipients will apply for fiscal year 1978 funds on current forms and under current planning requirements, except as specifically modified. These localities thus will have sufficient lead time to implement the new requirements in an orderly fashion, in coordination with the Housing Assistance Plan, and to develop meaningful three-year plans in full consultation with citizens. Consistent with this, the title of this section has been changed to "Community Development and Housing Plan," and the linkage between housing and community development is emphasized throughout.

The other major issues that were raised and the actions taken are as follows:

Regarding the summary of community development and housing needs, many local officials stated that the requirement to describe the needs of all neighborhoods having significant concentrations of low- and moderate-income persons was onerous, particularly for cities having many such areas. This requirement has accordingly been deleted.

Various public interest groups concerned with the needs of lower-income persons recommended that the needs of low-income and moderate-income persons be described separately. This was not adopted because there is no national pattern of neglect of the needs of low-income persons in favor of moderate-income persons, and it was therefore concluded that an additional application requirement was unwarranted. A provision was added that

applicants shall describe any special needs of lower-income minority group members in response to a number of comments on that point.

With regard to the comprehensive strategy, there were few specific comments. The changes that have been made, and the reasons, are:

The section has been reorganized to state specific requirements in a more logical fashion. It now calls for a communitywide component in which the applicant describes its general development strategy and priorities for the use of funds. The neighborhood revitalization strategy accordingly is limited to projects which have a neighborhood focus, namely, plans for Neighborhood Strategy Areas, and plans for other neighborhood improvement efforts. The community facilities and public improvements strategy has been eliminated since it overlapped the other requirements; plans for such facilities are to be contained in the neighborhood revitalization strategy, where appropriate, or the communitywide strategy.

The housing component has been changed so that it is a comprehensive statement of the community's overall housing strategy, both assisted and non-assisted. The strategy includes the Housing Assistance Plan. In addition, it includes all citywide efforts to foster housing maintenance and improvements and increase housing opportunities, including regulatory actions and fair housing actions previously included under neighborhood revitalization. The plan to mitigate adverse effects of community development activities on low- and moderate-income persons has also been moved here in response to comments that such effects may result not only from neighborhood revitalization and that this requirement should therefore apply to all programs.

The economic development strategy is no longer limited to distressed cities since others may also carry out economic development activities with block grant funds. A provision has been added to include discussion of the needs of identifiable population groups experiencing significant unemployment or underemployment and to describe any job training to be offered such persons. Projects which benefit such persons are most appropriate in alleviating economic distress and should be emphasized.

Regarding the three-year activity summary, a number of local governments objected to the requirement to specify planned activities and funding levels in advance as they felt it would be difficult and limit local flexibility and ability to respond promptly to citizen requests. These comments were considered carefully and it was concluded that these requirements should be retained for the following reasons:

(1) This would provide strong incentive for longer range planning;

(2) It constitutes a more reasonable period to evaluate whether programs benefit low- and moderate-income persons;

(3) It will substantially reduce the paperwork required on an annual basis.

With regard to responsiveness to citizens, the three-year plans are required to be developed in consultation with citizens, and improved longer range planning would make citizen involvement more meaningful. In addition, applicants may amend programs where necessary.

The map requirements have been revised to conform to other changes. In response to numerous comments, they have also been changed to indicate that information need not be displayed according to census tract boundaries if another method of presentation is available and better describes the community.

Annual Community Development Program

The changes in this section are to conform to other changes in this subpart and to the application forms being developed. Added requirements are a general project description and anticipated accomplishments.

Housing Assistance Plan

The proposed regulations received comments from local governments, State and areawide planning agencies, public interest groups, and individuals. Three sections of the proposal received particular comment: completion of the 1976 three year goal, minimum percentage goals, and the establishment to critieria for determining the adequacy of rehabilitation. Comments and changes are detailed below.

General provisions

Several cities expressed concern that spatial deconcentration efforts were beyond their control and impossible to achieve on a local level. They further commented that providing opportunities for persons displaced as a result of activities precipitated by a HAP to relocate in their immediate neighborhoods was contrary to the concept of spatial deconcentration.

The Department emphasizes that the HAP should serve to promote spatial deconcentration by providing the opportunity for lower-income households to choose housing outside areas of concentrations of lower-income persons but, in no way, to infringe upon a household's choice to remain in their neighborhood even though it may be a lower-income area.

While public interest groups basically were pleased with the provisions requiring applicants to continue to address needs identified in prior HAPs and to take all actions within their control in order to facilitate the provision of assisted housing, comments from cities indicated their concern that HUD would not provide sufficient funds for them to meet all of the goals established in those HAPs and they cite past experience under the section 8 program as the basis for their concern. Because of the misconceptions surrounding these sections, we have made several changes. Responsibility of the applicant has been clarified by removing the citation on the use of public mechanisms when the private sector does not provide assisted housing. This was not intended to require applicants to devote all, or a specified amount of, their grant to housing assistance. Nor was it intended that a community would be exempt from the provisions if insufficient Federal funds were available. It was intended that a community would initially take those actions which would assist the private sector in providing the housing, including but not limited to provision of housing sites. At the point at which the private sector did not respond to available resources, it would be expected that the community would then assume that responsiblity. In order to clarify this intent, we have followed the recommendations of several commenters that a list of sample actions be included. These actions are referenced in this section, and they are set forth in § 570.306(b)(3)(iii).

Additionally, the section on the submission of HAPs prior to August 1, 1978 has been rewritten to further define the time periods covered by the annual housing action program, to provide consistency with 24 CFR 891, Review of Applications for Housing Assistance; Allocation of Housing Assistance Funds and to clarify that communities are required to address proportionality by household type only. In addition this section clarifies that applicants are required also to identify general locations for new construction and substantial rehabilitation.

Housing Assistance Plan Content

Housing conditions

Two comments requested that vacancy rates be required by unit sizes, and by rent levels. While applicants are asked to evaluate the vacant units in their communities in order to assess applicability of available housing programs to their needs, such evaluation is conducted from the point of view of general knowledge about the community. It does not require specific statistical data, cross tabulated by tenure, size, rent level, and condition as would be required if such information were requested in the presentation on conditions. Therefore, these requests have been rejected.

HOUSING ASSISTANCE NEEDS

Several public interest groups requested that both housing assistance needs and housing assistance goals be presented separately for low- (or very low-) income households. This request has not been reflected in the attached revisions. First, there has been no evidence provided that very low-income households have not received housing assistance where it has been provided for lower-income households. Second, a primary vehicle for the provision of assisted housing is the section 8 program which requires that at least 30 percent of all families assisted be very low- (i.e.; low) income. Similarly, the public housing program requires that at least 20 percent of the units in a project (placed under ACC after the 1974 HCD Act) be occupied by very low-income families.

A phrase has been added to this section to indicate that information on privately induced displacement is to be reported only when the information is available. It should be noted, in response to two comments, that displacement figures are estimates and that the Department is aware that the figures reported will not necessarily match exactly the number of households eventually displaced. We expect only that the estimates reflect generally available data and that they be considered in the planning process.

Several comments suggested that the requirement that all communities within the jurisdiction of an Areawide Planning Organization (APO) use the same data be eliminated.

The Department encourages areawide planning and is supportive of any process to strengthen it. The Areawide Housing Opportunities Plan (AHOP) is a vehicle which allows communities, through the APO, to plan for their jurisdictions in a coordinated manner and to assist HUD in the allocation of the Department's housing resources.

In endorsement of this approach we have not eliminated that requirement but we have revised it to reflect that only applicants which are within the jurisdiction of an APO having an approved AHOP will be required to use the same data. Applicants within the jurisdiction of an APO not having an approved AHOP are not required, but are encouraged to do so.

All of section 570.306(b)(2)(ii)(A) has been moved forward to section 570.306(b)(i)(A). This section was intended to refer to the needs assessment of not only households expected to reside but to the assessment of households currently residing as well. The assessment of the number of households Expected to Reside (ETR) is to be prepared for metropolitan areas using the methodology set forth in these regulations. Alternative methodologies, if approved by HUD, would be required to be used by all communities within the jurisdiction of the APO receiving approval of an AHOP.

The general tenor of response to the revised ETR formula was favorable with only three commenters suggesting that an employment factor be included as an addition to the formula, and one commenter suggesting retention of the current methodology. The Department has decided to adopt the proposed simplified formula on the basis that estimates derived address the broader concept of spatial deconcentration. Several commenters questioned whether the revised formula would permit a negative estimate of ETR. It is not possible to separate the effects of potential outmigration when dealing with applicants on an individual basis; therefore, calculations which result in a negative figure are to be recorded as a zero.

Use of the revised ETR formula will become effective August 1, 1978.

Finally, nonmetropolitan applicants are required to present their best estimate of the number of lower-income households who reasonably could be expected to reside in their community. If, based on available data, this estimate should reasonably be zero, then the applicant is permitted to record it as such.

The commenters asked that the derivation of step 5 in the formula be explained. Simply, it is the result of factoring the equation used for the ETR formula to solve for x = ETR.

Several commenters suggested that no adjustment be made in the ETR formula in order to derive the estimate of the number of households who could reasonably be expected to reside. It must be understood that the formula, without the adjustment, results not in the number of households who reasonably could be expected to reside, but in the number of households which, statistically, should reside. Without the adjustment, there is an assumption that each household which statistically should move, will move. This is an invalid assumption; therefore, based on information on movement patterns, the Department has determined that the adjustment of one-third of the gross estimate is reasonable.

Suggestions to incorporate adjustments on a sliding scale were evaluated and rejected on the basis of complexity and resultant inequality.

THREE YEAR HOUSING PROGRAM

As indicated in the discussion of general provisions, we have included in this section examples of the types of actions HUD expects an applicant to take to demonstrate that it is exercising all means within its power to achieve the goals in its Housing Assistance Plan (HAP) and to address any special housing needs and/or conditions in its community. Actions are required to be cited whenever past performance or anticipated difficulties warrant, and whenever special needs and/or conditions are cited.

The requirement to identify general locations separately by household type has been removed from the regulations in response to numerous comments, but most particularly because general locations typically should not be so small as to be appropriate exclusively for one household type only

ANNUAL HOUSING ACTION PROGRAM

Many commenters questioned the inclusion of a requirement for applicants to specify the housing assistance programs which it did not wish to utilize. This requirement was intended to be a conforming change to revisions to 24 CFR 891. Inasmuch as these regulations have yet to be published for comment, the paragraph has been eliminated.

STANDARDS AND CRITERIA FOR APPROVAL OF HAPS'.

The issue that generated the largest volume of comment was the establishment of a minimal goal. Cities contended that the percentage was too excessive because HUD would never be able to provide sufficient funds for applicants to meet five percent of need per year. Public interest groups contended that the percentage was too low and should be increased. Others proposed elimination of a percentage to be replaced with narrative descriptions of the relationship of goals to needs and an emphasis on monitoring. Concern was also expressed that relating the percentage to a 20 year time frame was too restrictive and did not allow for changes in an applicant's needs.

The Department has decided to retain a percentage relationship between needs and goals but we have modified it to reflect goals which would meet at least 15 percent of need during each three year period and not necessarily 5 percent each year. Also, it should be noted that the goals are related to the total need, and not to the need for rental units, or new construction units, alone.

Because the percentage relationship has been retained unless an applicant can demonstrate that a goal of 15 percent over three years is infeasible, the paragraph on realistic goals has been removed to eliminate redundancy.

The final issue to elicit substantial comment was the section on adequacy of rehabilitation. Response to this issue was received from all categories of commenters and was unanimous in requesting the elimination of local codes as a criteria of satisfactory completion of rehabilitation. Given the comments received, particularly those citing probable prohibitive rehabilita-

tion costs because of stringent codes, the Department has accepted the recommendations and has chosen to use only Section 8 Existing Housing Quality Standards as a criteria.

Finally, § 570.306(c)(2)(i) was considered to be repetitive and was eliminated.

CERTIFICATIONS

Section 570.307(k) adds a certification which provides that buildings and facilities, other than privately owned residential structures, be accessible to the handicapped.

PUBLIC AVAILABILITY OF AND OBJECTIONS TO APPLICATIONS

In response to comments, the rules previously contained in § 570.309 have been transferred to the section on citizen participation, and this section has now been reserved.

HUD REVIEW AND APPROVAL OF APPLICATIONS

The following changes have been made: § 570.311(a)(1)(ii) has been revised to read that all required component parts of the application are submitted and properly completed. Section 570.311(c)(2)(iv) has been changed to include members of minority groups.

AMENDMENTS

There was a considerable amount of comment that the currently effective ten percent threshold for requiring submission of Community Development Program amendments to HUD should be retained, and this requirement has accordingly been restored. The rule, however, has been rewritten to improve its clarity.

The Housing Assistance Plan amendment requirement has been changed for conformity to revised regulations to 24 CFR Part 891 to be issued.

PERFORMANCE REPORT

Comments from local government officials generally favored submission of the grantee performance report after the completion of the applicant's program year. In contrast, comments from civil rights organizations, citizen groups, and legal aid societies generally favored submission of the report prior to submission of the application, so that it could be used in reviewing an applicant's past performance in conjunction with review of the application. The Department agrees with the timing favored by the latter groups and, therefore, the proposed rule requiring submission of the report by the end of the eighth month in a recipient's program year has been adopted.

OTHER INFORMATION: A Finding of Inapplicability with respect to Environmental Impact has been prepared in accordance with HUD Handbook 1390.1. In addition, a Finding of Inapplicability with respect to Inflation Impact has been prepared in accordance with Executive Order 11821. Copies of the Findings are available for inspection and copying during business hours in the Office of the Rules Docket Clerk, Room 5216, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Accordingly, 24 CFR Part 570 is amended by revising Subpart D, and by making other technical and conforming changes to reflect the revisions.

I. The table of contents to Subpart D is revised to read as follows:

Subpart D—Entitlement Grants

Sec.
570.300 Outline of application requirements.
570.301 Planning considerations.
570.302 Program benefit to low- and moderate-income persons.
570.303 Citizen participation requirements.
570.304 Community development and housing plan.
570.305 Annual community development program.
570.306 Housing assistance program.
570.307 Certificates.
570.308 Timing of application submission.
570.309 Public availability of and objections to application [Reserved].
570.310 A-95 clearinghouse review and comment.
570.311 HUD review and approval of application.
570.312 Amendments.

AUTHORITY: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

II. Subpart D is revised to read as follows:

Subpart D—Entitlement Grants

§ 570.300 Outline of application requirements.

This section briefly outlines the requirements which must be met by the applicant when applying for an entitlement grant and references other sections containing more detailed information on these requirements.

(a) *Planning requirements.* Requirements that the applicant must meet in planning its community development program are covered in the following sections.

(1) Section 570.301 describes general planning considerations;

(2) Section 570.302 describes the requirement that the applicant's community development program must be planned and carried out so as to principally benefit persons having low- and moderate-income; and

(3) Section 570.303 describes the requirement that the applicant must prepare and implement a written citizen participation plan, part of which provides for citizen involvement in the planning process.

(b) *Triennial submission requirements.* Every third year, beginning with the first application submitted on or after August 1, 1978, the applicant must submit an application consisting of the following:

(1) Standard Form 424, Federal Assistance, prescribed by OMB Circular No. A-102;

(2) Community Development and Housing Plan as described in § 570.304;

(3) Annual Community Development Program as described in § 570.305;

(4) Housing Assistance Plan as described in § 570.306; and

(5) Certifications as described in § 570.307.

(c) *Annual submission requirements.* For each of the other years in a three year period the applicant must submit an application consisting of the following:

(1) Standard Form 424;

(2) Annual Community Development Program as described in § 570.305;

(3) Annual Housing Action Program as described in § 570.306(b)(5); and

(4) Certifications as described in § 570.307.

(d) *Other application requirements.* The applicant must also comply with the following requirements when applying for an entitlement grant:

(1) Requirements on the timing of applications as set forth in § 570.308;

(2) Requirements on notifying State and areawide clearinghouses of the applicant's intent to apply for Federal assistance, on submitting the application to clearinghouse for comment, and on taking actions following clearinghouse reviews, as described in § 570.310.

§ 570.301 Planning considerations.

(a) *Comprehensive strategies.* The act requires that applicants have a three-year plan for the use of block grant funds which demonstrates a comprehensive strategy for meeting identified community development and housing needs. The Act provides descretion to local governments to develop strategies appropriate to local conditions and permits a wide choice of projects and activities to carry out those strategies. However, a comprehensive strategy shall include: (1) a systematic assessment of the locality's community development and housing needs and the resources available to meet those needs; (2) determination of the applicant's long- and short-term objectives and priorities for the use of funds; (3) development of a three-year plan of activities designed to meet the needs and objectives identified. This plan shall provide for undertaking housing and community development activities in a coordinated and mutual-

ly supportive manner consistent with local and areawide development planning and national urban growth policies. The requirements for the summary of the three-year plan are stated in § 570.304.

(b) *Coordination of programs.* It is recognized that different strategies may be appropriate and effective in dealing with different local needs and conditions. However, the Act limits certain activities to areas in which block grant assisted physical development programs are being carried out in a concentrated manner, for example, public services pursuant to § 570.201(e). Moreover, certain other HUD programs are designed to focus on areas of concentrated community development activity, for example, Urban Homesteading, and Section 8 Substantial Rehabilitation Special Procedures pursuant to 24 CFR Part 881. Applicants are therefore encouraged to designate appropriate areas in which various programs can be carried out in a concentrated and coordinated manner. For purposes of these regulations such areas shall be designated as Neighborhood Strategy Areas as defined in paragraph (c).

(c) *Neighborhood strategy area.* This is an area which is selected by the applicant and designated in its three-year Community Development and Housing Plan for a program of concentrated community development activities. For each Neighborhood Strategy Area the applicant shall include in its Plan a comprehensive strategy for stabilizing and upgrading the area which:

(1) Provides for a combination of physical improvements, necessary public facilities and services, housing programs, private investment and citizen self-help activities appropriate to the needs of the area;

(2) Coordinates public and private development efforts;

(3) Provides sufficient resources to produce substantial long-term improvements in the area within a reasonable period of time; in determining the size of the area the applicant shall take into account the severity of its problems and the amount of resources to be provided so that this requirement can be met.

(4) Examples of Neighborhood Strategy Area programs include: a residential rehabilitation program which provides loans and grants to property owners in a designated area in which street improvements, playgrounds, and public services are also being provided; and a redevelopment program which includes systematic demolition of substandard structures and assemblage of sites for new construction in a particular area in conjunction with site improvements and facilities necessary to attract new development.

(5) In order for a program to qualify as a Neighborhood Strategy Area program, the activities which an applicant includes in such program (including activities to be funded and implemented in more than one action year) shall be grouped and deemed by the applicant to be a project, as defined in 24 CFR § 58.3. The environmental review of such project should take into account the relationship between component activities, and the cumulative environmental effects of activities.

(d) *Planning and implementing multiyear projects.* (1) An applicant may allocate funds in an application for the payment of part of the cost of a multiyear project to be financed in increments with funds becoming available in succeeding program years, provided the full scope and estimated cost of the total project is described in the first application in which grant funds are allocated for the project. This does not preclude use of subsequent year entitlement funds to complete a project which was designed as a single year proj- ect and whose cost exceeds initial estimates.

(2) The environmental assessment of a multiyear project, performed under 24 CFR Part 58, should encompass the entire multiyear scope of activities. Upon certification that the applicant has completed the environmental requirements for a multiyear project, HUD may issue its release of funds for the entire multiyear project. Such release of funds shall be subject to the provisions of paragraphs (3) and (4) of this subsection.

(3) Approval of each increment of a multiyear project is subject to the general availability of grant funds, adequate performance, and the submission of an acceptable application in each year in which grant funds are to be applied toward payment of project cost. In those instances where the applicant exhausts previously approved grant funds before the next increment is approved, the applicant may obligate and spend local funds to continue the work and be reimbursed with funds approved for the next increment, provided the locally funded work was undertaken in compliance with the requirements of this Part.

(4) The continued authority of an applicant to commit Title I funds to a multiyear project or * * * to be reimbursed for the expenditure of local funds for costs of such project, after completion of environmental requirements and HUD release of funds, shall be subject to the continued relevance and completeness of the environmental assessment performed. In the event of any significant or substantial change in the nature, magnitude or extent of the project, or any significant or substantial change in the environment affecting the project, the applicant shall, prior to any further commitment of Title I funds to the project, complete the requirements of 24 CFR Part 58 relating to the updating of environmental clearances.

(5) The applicant may also obligate and spend local funds prior to approval of its application for the purpose of completing activities previously approved and assisted under the urban renewal program, the water and sewer facilities program, the neighborhood facilities program, or the open space land program, described in § 570.1(b)(1), (3), (4), and (6), respectively. After approval of its application, the applicant will be reimbursed with funds programmed in the application to cover those costs, provided such locally funded work was undertaken in compliance with the requirements of this Part. The environmental review requirements of 24 CFR Part 58, except the provisions of Subpart C of Part 58, must be complied with prior to the incurring of any such costs to be reimbursed by HUD; however, the provisions of Subpart C of Part 58 must be complied with prior to the release of funds by HUD.

(e) *Reimbursement for costs of planning and environmental studies.* Prior to approval of its application, an applicant may obligate and spend local funds for the purpose of environmental assessments required by 24 CFR Part 58, for the planning and capacity building purposes authorized by § 570.205 (a) and (b), and for the provision of information and resources to citizens pursuant to § 570.206(b). After approval of its application, the applicant will be reimbursed with funds programmed in the application to cover those costs, provided such locally funded activities were undertaken in compliance with the requirements of this Part.

§ 570.302 Program benefit to low- and moderate-income persons.

(a) *Statutory Provisions.* The housing and Community Development Act states as its primary objective the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income. The Act also requires the applicant to certify that its community development program has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families, or aid in the prevention or elimination of slums or blight. It also permits approval of activities which the applicant certifies and the Secretary determines are designed to meet other community development needs having a particular urgency. Consistent with the statutory objectives, the following rules govern the expenditure of program funds to insure that the program principally benefits low- and moderate-income persons.

(b) *General Requirements.*

(1) All projects and activities must either principally benefit low- and moderate-income persons, or aid in the prevention or elimination of slums and blight, or meet other community development needs having a particular urgency.

(2) Each annual application for funds under this subpart must provide that the applicant's program as a whole shall principally benefit low- and moderate-income persons.

(3) An application shall be presumed to principally benefit low- and moderate-income persons, absent substantial evidence to the contrary, where not less than 75 percent of the program funds to be available during the three year period covered by the applicant's community development and housing plan shall be used for projects and activities which principally benefit low- and moderate-income persons under the standards in paragraph (d) of this section. Applications submitted between May 1, 1978 and July 15, 1978, shall be presumed to principally benefit low- and moderate-income persons if at least 75 percent of the program funds applied for shall be used for projects and activities which meet the standards in paragraph (d).

(4) The applicant shall maintain in its files the documentation on which basis it determines that projects principally benefit low- and moderate-income persons. Such documentation may include 701 planning studies, welfare and unemployement records, local surveys, and similar generally available information. HUD will monitor the applicant's performance to ensure that the applicant's community development program principally benefits low- and moderate-income persons.

(5) In designing projects and selecting areas in which to carry out activities, the applicant shall address the needs of low- as well as moderate-income persons, given the nature and relative severity of their needs, and shall include projects suitable to meeting those needs.

(c) *Review Guidelines.*

(1) An application which meets the standard in paragraph (b)(3) will not be subject to further examination by HUD prior to funding with respect to benefit to low- and moderate-income persons.

(2) An application which does not meet the standard in paragraph (b)(3) shall be subject to an examination by HUD prior to funding to determine whether the activities proposed are plainly inappropriate to meeting the needs of the applicant because of the nature and severity of the needs of low- and moderate-income persons in relation to the general needs and conditions of the applicant, and whether taken as a whole, the proposed program principally benefits low- and moderate-income persons. In making this review, HUD shall consider the information in the applicant's three year community development and housing plan, its annual Community Development Program, past expenditure patterns in areas having concentrations of lower income persons, and other generally available data.

(d) *Projects which principally benefit low- and moderate-income persons.* A project or activity will be considered to principally benefit low- and moderate-income persons if it is designed to meet identified needs of low- and moderate-income persons as described in the applicant's community development plan and it meets one of the following standards:

(1) The project has income eligibility requirements that limit the benefits of the project to low- and moderate-income persons.

(2) The project does not have income eligibility requirements but the majority of the beneficiaries are low- and moderate-income persons. The following are examples of projects which meet this standard:

(i) A neighborhood strategy area program or a public improvement activity which serves an area, delineated by the applicant, where the majority of the residents are low- and moderate-income persons. Such an area may consist of a locally defined neighborhood or planning district, one or more census tracts, enumeration districts, or parts thereof; it need not be coterminous with census boundaries.

(ii) A project designed to attract or retain neighborhood commercial facilities which provide essential services to residential areas which have a majority of low- and moderate-income residents.

(iii) Economic development projects which are designed to provide direct employment opportunities for permanent jobs, the majority of which will be for low- and moderate-income persons if the persons expected to be employed are defined as low- and moderate-income prior to employment; it is not necessary that the incomes of persons employed by economic development projects be low or moderate after the project is completed.

(iv) A senior center which is used principally by persons of low- and moderate-income.

(3) Removal of architectural barriers pursuant to § 570.201(k); such projects may be assumed to principally benefit low- and moderate-income persons in the absence of substantial evidence to the contrary.

(4) A project which must be carried out prior to or is an integral part of a project which will principally benefit low- and moderate-income persons. An example is the extension of water and sewer lines to permit construction of low-rent housing. The cost of such projects must not be unreasonable in relation to the low- and moderate-income benefits to be provided. The housing or other facilities on which basis the project is justified must be included in the applicant's community development plan and there must be evidence acceptable to HUD that construction of the housing or other facilities will in fact be commenced within the three year period covered by the Plan.

(5) A project which serves an area with less than a majority of low- and moderate-income persons; where: (i) The applicant has no areas within its jurisdiction where low- and moderate-income persons constitute a majority, or (ii) the applicant has so few such areas that it is inappropriate to limit the grant to projects in those areas; provided that: (A) the project serves areas having the largest proportion of low- and moderate-income residents in the locality; (B) the project is clearly designed to meet identified needs of lower income persons in those areas; and (C) the project benefits such persons at least in proportion to their share of the population of the areas served.

(e) *Projects which prevent or eliminate slums or blight.* The following projects and activities will be considered to prevent or eliminate slums or blight:

(1) A project in an area which is a slum, or a blighted, deteriorated, or deteriorating area, as defined by State or local law, and in which the applicant undertakes a comprehensive program, as defined in § 570.301(c), to remedy the conditions which qualify the area as an urban renewal or similar area. In such cases the applicant may undertake any otherwise eligible activity necessary to accomplish its strategy for upgrading the area. Because State laws vary, HUD will recognize those State or local laws which authorize public actions for the purpose of slum and blight prevention and elimination. It is not necessary that an area be formally designated an urban renewal or similar area, but evidence supporting a local determination that an area meets criteria for slums and blight must be maintained in the locality's records.

(2) A project designed to eliminate detrimental conditions which are scattered or located outside slum or blighted areas. Authorized activities are only those necessary to eliminate the specific conditions of blight or physical decay, by acquisition of blighted structures, demolition, historic preservation, and relocation.

(3) Activities necessary to complete Federally assisted urban renewal projects which do not principally benefit low- and moderate-income persons.

(f) *Projects designed to meet needs having a particular urgency.* These

are projects which the applicant certifies and the Secretary determines are designed to alleviate a serious and immediate threat to the health or welfare of the community which is of recent origin where the applicant is unable to finance the projects on its own, and other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months preceding the application for funds.

(g) *Determining benefits to low- and moderate-income persons.*

(1) In determining the amount of program funds which principally benefit low- and moderate-income persons, the costs of administration and planning cited in § 570.205 may be excluded as they will generally be assumed to benefit low- and moderate-income persons in the same proportion as the remainder of the grant.

(2) The amount of any program funds to be applied to the repayment of urban renewal temporary loans may also be excluded.

(3) Funds budgeted for contingencies and/or local option activities may also be excluded; such funds shall be expended in such a manner that the program will continue to meet the requirements of this section.

(4) If a project or activity meets the definition in paragraph (d) of principally benefitting low- and moderate-income persons, the cost of the project or activity may be determined to benefit low- and moderate-income persons. This includes projects to prevent or eliminate slums and blight and projects designed to meet a need having a particular urgency where such projects principally benefit low- and moderate-income persons under paragraph (d).

(5) If a project is designed to prevent or eliminate slums or blight or to meet needs having a particular urgency and does not also principally benefit low- and moderate-income persons under the provisions in paragraph (d), a particular activity (such as a rehabilitation loan program with income limits) within that project may nevertheless be counted in determining the amount of program funds which benefit low- and moderate-income persons.

(6) In determining whether a proposed project will actually benefit low- and moderate-income persons, the nature of the needs identified, the relationship of the project to meeting those needs, and the net effect of the completed project shall be considered. Thus, mere location of an activity in a low- or moderate-income area does not conclusively demonstrate that a project or activity benefits lower income persons. A neighborhood revitalization effort which creates improved housing and better living environment, principally for low- and moderate-income persons, would be counted as such. Where such a program results in a change in the income characteristics of the area so that a majority of the ultimate beneficiaries are higher income persons, the program would not be counted as principally benefitting low- and moderate-income persons.

(h) *Mitigating adverse effects.* Where the program will result in direct or indirect displacement or other hardships to low- and moderate-income persons, the applicant shall take appropriate steps to minimize such displacement or hardships. Section 570.304(b)(2) requires the applicant to include in its community development plan the actions it will take to assist low- and moderate-income persons to remain in existing locations when they prefer to do so, and to mitigate adverse effects on such persons as a result of neighborhood revitalization activities.

§ 570.303 Citizen participation requirements.

(a) *General.* The applicant shall provide citizens with an adequate opportunity to participate in an advisory role in planning, implementing, and assessing the program. In so doing, the applicant shall also provide adequate information to citizens, hold public hearings to obtain views of citizens, and provide citizens an opportunity to comment on the applicant's community development performance. Nothing in these requirements, however, shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of its Community Development Program.

(b) *Written citizen participation plan.* The applicant shall prepare a written citizen participation plan that provides procedures by which each of the requirements set forth in the following paragraphs will be implemented. The plan shall go into effect no later than August 1, 1978. The provisions concerning citizen involvement in implementing and assessing the program apply to activities that are ongoing as of that date, as well as to all future activities. The plan shall remain in effect until all activities assisted under this Part are completed, or until it is superseded by a new plan. Upon request by HUD, the plan shall be submitted to HUD to aid in the handling of complaints and to facilitate monitoring and evaluation.

(c) *Standards of participation.* The applicant shall provide a process of citizen participation at the communitywide level with regard to the overall application and program. Applicants with populations of 50,000 or more shall also provide a process of citizen participation at the neighborhood level in areas where a significant amount of activity is proposed or ongoing. These processes shall meet the following standards:

(1) All aspects of citizen participation shall be conducted in an open manner, with freedom of access for all interested persons;

(2) There shall be involvement of low-and moderate-income persons, members of minority groups, residents of areas where a significant amount of activity is proposed or ongoing, the elderly, the handicapped, the business community, and civic groups who are concerned about the program. Where the applicant chooses to establish, or has established, a general communitywide citizen advisory committee, there shall be substantial representation of low- and moderate-income citizens and members of minority groups. Similarly, where the applicant chooses to establish or recognize neighborhood advisory committees in areas where low- and moderate-income persons or members of minority groups reside, there shall be substantial representation of such persons;

(3) The applicant shall make reasonable efforts to ensure continuity of involvement of citizens or citizen organizations throughout all stages of the program;

(4) Citizens shall be provided adequate and timely information, so as to enable them to be meaningfully involved in important decisions at various stages of the program;

(5) Citizens, particularly low- and moderate-income persons and residents of blighted neighborhoods, shall be encouraged to submit their views and proposals regarding the Community Development Program;

(d) *Scope of participation.* The applicant shall provided for the continuity of citizen participation throughout all stages of the program. This includes citizen involvement in the development of the citizen participation plan, as well as involvement in the following areas:

(1) *Application development.* Citizens shall be involved in development of the annual application, including:

(i) The three-year community development plan, including the identification of commmunity development and housing needs, and the setting of priorities;

(ii) The Housing Assistance Plan, including the annual housing action program;

(iii) The annual Community Development Program; and

(iv) Subsequent amendments and other changes to the above, in accordance with § 570.312.

(2) *Program implementation.* The roles citizens will play in program implementation shall be indicated in the citizen participation plan. At a minimum, this shall include involvement of citizens in an advisory role in policy

decisions regarding program implementation. It may also include self-help activities carried out by citizen groups and direct program operations conducted by neighborhood-based organizations and other eligible nonprofit entities.

(3) *Assessment of performance.* Citizens and citizen organizations shall be given the opportunity to assess and submit comments on all aspects of the applicant's *community development performance, including the performance of the applicant's grantees and contractors.* They shall also be given the opportunity to assess projects and activities to determine whether objectives are achieved. The methods by which such opportunities shall be made available shall be indicated in the citizen participation plan. The applicant shall include in its annual performance report: (i) Copies of comments submitted by citizens regarding the applicant's community development performance; (ii) the applicant's assessment of such comments; and (iii) a summary of any actions taken in response to the comments received.

(e) *Submission of views and proposals.* The applicant shall provide for and encourage the submission of views and proposals regarding the Community Development Program by citizens, particularly low- and moderate-income persons and residents of blighted neighborhoods. This includes submission of such views:

(1) Directly to the applicant during the planning period prior to public hearings on the application;

(2) To recognized neighborhood, project area, and communitywide citizen organizations;

(3) At neighborhood and other meetings, if scheduled by the applicant prior to formal public hearings; and

(4) At formal public hearings.

The applicant shall provide timely responses to all proposals submitted to it, including written responses to written proposals stating the reasons for the action taken by the applicant on the proposal. The citizen participation plan shall state the number of days within which responses will be provided. Whenever practicable, responses should be provided prior to the final hearing on the application.

(f) *Consideration of objections to applications.* Persons wishing to object to approval of an application by HUD may make such objection known to the appropriate HUD Area Office. HUD will consider objections made only on the following grounds: The applicant's description of needs and objectives is plainly inconsistent with available facts and data; or the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant; or the application does not comply with the requirements of this Part or other applicable law; or the application proposes activities which are otherwise ineligible under this Part.

Such objections should include both an identification of the requirements not met and, in the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with significant, generally available facts and data, the data upon which the persons rely. Although HUD will consider objections submitted at any time, such objections should be submitted within 30 days of the publication of the notice that the application has been submitted to HUD, as described in paragraph (i)(3) below. In order to ensure that objections submitted will be considered during the review process, HUD will not approve an application until at least 45 days after receipt of an application.

(g) *Complaints.* The plan shall provide for answering complaints in a timely and responsive manner. The applicant shall make every reasonable effort to provide written responses within 15 working days.

(h) *Technical assistance.* To facilitate citizen participation, the plan shall provide for technical assistance. The level and type of assistance determined appropriate by the applicant shall be provided to: (1) Citizen organizations, so that they may adequately participate in planning, implementing, and assessing the program; and (2) groups of low- and moderate-income persons and groups of residents of blighted neighborhoods which request assistance in developing proposals and statements of views.

It may also be directed toward assisting citizens in organizing and operating neighborhood and project area organizations and in carrying out Community Development Program activities. Technical assistance should be provided by specialists jointly selected by the applicant and the organizations and groups to be assisted. It may be provided either by the applicant directly or through arrangements with public or private entities.

(i) *Adequate information.* The applicant shall provide for full public access to program information and affirmative efforts to make adequate information available to citizens, especially to those of low- and moderate-income and to those residing in lower-income or blighted neighborhoods.

(1) At the time the applicant begins planning for the next program year, the following program information shall be provided to citizens:

(i) The total amount of community development block grant funds available to the applicant for community development and housing activities, including planning and administrative activities,

(ii) The range of activities that may be undertaken with these funds and the kind of activities previously funded in the community,

(iii) The processes to be followed in drawing up and approving the local application and the schedule of meetings and hearings,

(iv) The role of citizens in the program, as provided under this section,

(v) A summary of other important program requirements.

(2) The applicant shall provide for full and timely disclosure of its program records and information consistent with applicable State and local laws regarding personal privacy and obligations of confidentiality. Documents relevant to the program shall be made available at the applicant's office during normal working hours for citizen review upon request (either written or oral). Such documents include the following:

(i) All mailings and promotional material,

(ii) Records of hearings,

(iii) All key documents, including all prior applications, letters of approval, grant agreements, the citizen participation plan, performance reports, evaluation reports, other reports required by HUD, and the proposed and approved application for the current year,

(iv) Copies of the regulations and issuances governing the program, and

(v) Documents regarding other important program requirements, such as contracting procedures, environmental policies, fair housing and other equal opportunity requirements, relocation provisions, and the A-95 review process.

(3) When the application is submitted to HUD upon completion of clearinghouse reviews, the applicant shall publish a notice in a newspaper of general circulation stating that the application has been submitted and is available to interested parties upon request and describing the requirements on citizen objections to applications contained in paragraph (f), above.

(4) The applicant shall make copies of the citizen participation plan, the proposed and approved application, and the annual performance report available at locations conveniently located for persons affected by the program and accessible to the handicapped.

(j) *Public hearing.* The plan shall provide for a sufficient number of hearings to obtain citizen views and to respond to citizen proposals and questions at different stages of the program. Such hearings shall be held at convenient times and locations which permit broad participation, particularly by low- and moderate-income persons and by residents of blighted neighborhoods. Hearing arrangements should make possible the full participation of handicapped citizens.

(1) *Presubmission hearings.* The applicant shall hold at least two kinds of

public hearings prior to the submission of the application:

(i) To obtain views and proposals of citizens at the initial stage of application development on community development and housing needs and priorities, and to obtain comments on the applicant's community development performance;

(ii) To obtain views of citizens on the proposed application prior to submission of the application to A-95 clearinghouses.

(2) *Performance hearings.* In order to review program progress and performance, the applicant shall hold an additional public hearing or hearings thirty to sixty days prior to the start of planning for the next program year.

(3) *Notices.* In order to give adequate notice of public hearings:

(i) The applicant shall, 10 days prior to each public hearing, publish a notice in easily readable type in the nonlegal section of newspapers of general circulation, including minority and non-English language newspapers of general circulation where they exist. Such notices shall indicate the date, time, place and procedures of the hearing and topics to be considered. The applicant also shall make reasonable efforts to provide the notices, in the form of press releases, the neighborhood newspapers or periodicals serving low- and moderate-income neighborhoods.

(ii) The applicant is encouraged to take other actions to widely publicize the hearings, such as arranging for public service radio and television announcements.

(k) *Bilingual.* Wherever a significant number of low- and moderate-income persons and residents of blighted neighborhoods speak and read a primary language other than English, the plan shall provide that all notices of public hearings and summaries of basic information be produced in such language or languages and that bilingual opportunities shall be offered at required public hearings.

(l) *Contingency and local option activities.* The plan shall provide that if the applicant sets aside funds in its application for contingencies and/or local option activities, or if it chooses to identify in its application activities that could replace any activities disapproved by HUD during its application review, the citizen participation process shall be involved in the selection of such contingency or local option activities.

(m) *Program amendments.* The plan shall provide for citizen participation in any amendments to an approved application, except those for disaster activities. If the nature of the amendment is such that prior HUD approval is required, as specified in § 570.312, the applicant shall hold public hearings on the amendment. If the amendment does not require prior HUD approval, the plan shall describe how the citizen participation process shall be involved in the amendment.

§ 570.304 Community Development and Housing Plan.

An entitlement application shall include a summary of a Community Development and Housing Plan. This document shall be submitted every third year as part of the annual application for funds beginning with the first application submitted on or after August 1, 1978. It shall summarize the community development and housing needs of the applicant. Its comprehensive strategy for meeting those needs, including its long- and short-term objectives, and the projects and activities planned for the next three years.

(a) *Summary of community development and housing needs.* This shall include the following:

(1) *A community profile* on a form to be prescribed by HUD, which provides data regarding population and income characteristics of the community, the condition of the housing stock, and the economic condition of the community as a whole.

(2) *A narrative summary* of the applicant's community development and housing needs, particularly those of low- and moderate-income households and any special needs of identifiable segments of the total group of lower income persons. The narrative shall include a brief description of the major needs for neighborhood revitalization, for community facilities and public improvements, and for housing.

(b) *Comprehensive strategy.* The applicant shall describe how it proposes to meet its identified community development and housing needs, particularly those of low- and moderate-income households residing in or expected to reside in the community and any special needs of identifiable segments of the lower income population. The strategy shall include a communitywide component which describes the development strategy of the applicant, the major objectives the applicant seeks to accomplish, the priorities it has established for the use of block grant funds, and the factors it has taken into account in selecting areas for treatment and designing programs to meet identified needs. In addition, it shall include the following component strategies:

(1) *Neighborhood revitalization.* The applicant shall describe its strategy for maintaining and preserving viable neighborhoods and for upgrading neighborhoods affected by blight and deterioration.

This shall emphasize the actions to be taken that will improve conditions for low- and moderate-income persons residing in or expected to reside in the community.

(i) Areas targeted for concentrated action as Neighborhood Strategy Areas pursuant to § 570.301(c) shall be identified. For each such area the applicant shall describe:

(A) The objectives, both long-term and short-term, to be achieved, quantified whereever possible:

(B) The physical improvement programs to be carried out with block grant funds, such as code enforcement, rehabilitation, acquisition, demolition, or public improvements:

(C) Related programs proposed such as Urban Homesteading and section 8 Substantial Rehabilitation Special Procedures;

(D) Public Services to be carried out in support of the physical improvement programs;

(E) An implementation schedule showing the anticipated timing of activities and the coordination of block grant funded activities and other local actions;

(F) The anticipated resources, including block grant funds, other Federal, State, or local funds, and private investment;

(G) The role of any neighborhood organizations;

(H) How the housing assistance goals and general locations in the Housing Assistance Plan, particularly the rehabilitation goals, support the applicant's neighborhood revitalization strategy.

(ii) Other neighborhood improvement efforts shall be described. This shall include specific actions designed to prevent and eliminate slums and blight where such actions are not carried out in a concentrated manner; it shall also include actions to provide improved community facilities and public improvements where they will principally benefit persons of low- and moderate-income. The strategy shall describe the activities to be carried out, the objectives to be accomplished, the anticipated timing, and the block grant and other funds to be provided.

(2) *Housing.* The applicant shall describe a communitywide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. The strategy shall consist of a Housing Assistance Plan as described in § 570.306 as well as the following:

(i) A strategy for any programs to be carried out on a communitywide basis, such as provision of rehabilitation financing for low- and moderate-income persons or elimination of detrimental conditions; the strategy shall include the goals to be accomplished, a timetable of actions to be taken, and the amount of block grant and other funds to be provided;

(ii) Any regulatory and other actions proposed to foster housing maintenance and improvements. This may include: actions to eliminate redlining

with respect to property insurance and the availability of credit for the purchase and rehabilitation of housing; and actions such as provision of tax incentives to promote investment in restoration of deteriorated or abandoned housing;

(iii) The applicant's strategy for increasing the choice of housing opportunities for low- and moderate-income persons, including members of minority groups and female-headed households, including efforts to achieve spatial deconcentration of such housing opportunities and actions to affirmatively further fair housing;

(iv) Any community facilities and improvements to be provided in furtherance of the applicant's housing strategy and to assure accomplishment of goals for assisted housing; and

(v) Where the community development program will result in direct or indirect displacement or other hardships to low- and moderate-income persons, the strategy shall describe the actions the applicant will take to assist such persons to remain in their present neighborhoods when they prefer and to mitigate any adverse effects resulting from block grant funded activities.

(3) *Economic development.* A description of the applicant's strategy for economic develoment is required from applicants that propose block grant funded economic development activities: The strategy shall include:

(i) A description of the major needs for economic development in the locality; this shall include discussion of the needs of identifiable population groups experiencing significant unemployment or underemployment, as well as general economic needs of the applicant experiencing a stagnating or declining tax base or loss of population;

(ii) A description of the activities proposed to further economic development and to attract private investment, including the coordination of block grant funded activities with other local actions and a timetable for provision of other Federal and State resources;

(iii) The number and types of permanent jobs expected to result from economic development projects, particularly jobs for unemployed or underemployed population groups and low- and moderate-income persons and the types and extent of any job training which will be provided to such residents; and

(iv) Evidence of commitments or interest by developers of new or expanded employment facilities.

(c) *Three-year project summary.* This shall consist of a tabular summary of the projects proposed to be carried out with block grant funds during the next three years to implement the applicant's comprehensive strategy, grouped by location, the anticipated timing, the goals to be accomplished, the population benefitting, and the estimated block grant and other funds to be provided, and indicating whether the project or activity principally benefits low- and moderate-income persons, aids in the prevention or elimination of slums and blight, or meets other community development needs having a particular urgency. The requirements of this paragraph shall not apply to:

(1) Hold harmless applicants whose entitlement ends and who do not apply for small cities comprehensive grants involving multiyear funding commitments pursuant to § 570.423(b) during the same year; and (2) any applicant for a small cities grant who does not request a multiyear funding commitment.

(d) *Maps.* The plan shall include maps showing the following information. The maps shall be on a census tract or enumeration district base, but the information need not be displayed according to the tract or enumeration district boundaries.

(1) The extent and location of low- and moderate-income persons;

(2) The extent and location of minority group residents;

(3) The extent and location of substandard and deteriorated housing;

(4) The locations of block grant funded projects included in the three-year project summary.

(5) Neighborhood strategy areas, if any. Maps shall be clearly legible, and all required maps submitted shall be of the same scale and cover the same areas. The applicant may submit supplementary maps of a different scale, at its discretion, where this will increase clarity. More than one type of information may be combined on one map if the information is clearly legible when combined.

(e) *Interim provisions.* Applications submitted prior to August 1, 1978, shall conform to the Community Development Plan Summary requirements published in the FEDERAL REGISTER (41 FR 4134) on January 28, 1976. However, applicants proposing to undertake activities whose eligiblity under the rules in Subpart C depends on the activities being consistent with a strategy for community development shall supplement the plan summary with a brief narrative statement containing the information required by § 570.200(h).

§ 570.305 Annual Community Development Program.

Each annual application shall contain a Community Development Program describing the projects and activities to be carried out with program year funds. Such projects and activities shall be consistent with the previously submitted three-year Community Development and Housing Plan, or an amended plan shall be submitted with the application as required by § 570.312(a). The Community Development Program shall consist of the following:

(a) *Project summary.* The following information shall be provided for each project and activity to be commenced during the program year:

(1) The name of the project or activity;

(2) A description of the project which states its purpose, the sequence of activities, duration of the project, and the entity responsible for carrying it out;

(3) The location and service area, including the census tract(s) or enumeration district(s) of the project, and the entity responsible for carrying it out;

(4) Whether the project or activity principally benefits low- and moderate-income persons, aids in the prevention of elimination of slums and blight, or meets other community needs having a particular urgency;

(5) A description of the activities which comprise each project, and the estimated costs and timing;

(6) The amounts and sources of other public funds and private investments anticipated to be provided;

(7) The environmental review status;

(8) Anticipated accomplishments.

(b) *Cost summary.* This will consist of a tabular summary, on a form to be prescribed, of proposed block grant expenditures in specific categories and the anticipated resources available.

(c) *A map or maps* of the applicant's jurisdiction showing the locations of proposed activities, on a base map census tracts or enumeration districts, and any designated neighborhood strategy areas. The maps shall be consistent with the requirements of scale and legibility in § 570.304(d).

§ 570.306 Housing Assistance Plan.

(a) *General Provisions.* This section contains policies, procedures, requirements and standards governing the Housing Assistance Plan (HAP).

(1) *Purpose.* The HAP is required as part of the application for assistance under this Part. The HAP serves as a measure of the conditions of the applicant's housing stock and the needs of lower (low and moderate) income persons for housing assistance. Further, the HAP serves to establish goals for assistance best suited to meet the needs of lower income persons and to further the revitalization of the community, including the restoration and rehabilitation of stable neighborhoods to the maximum extent possible, and the reclamation of the housing stock where feasible through the use of a broad range of techniques for housing restoration by local government, the private sector, or community organiza-

tions, including provisions of a reasonable opportunity for tenants displaced as a result of such activities to relocate in their immediate neighborhood. The HAP must propose general locations for assisted housing which promote greater choice of housing opportunities and avoid undue concentrations of assisted persons in areas containing a high proportion of lower-income persons, and which further fair housing and assure the availability of public facilities and services adequate to support housing facilities. In addition, all communities are expected to share in providing expanded housing opportunities for lower-income persons and to participate in areawide solutions of housing problems through promotion of spatial deconcentration of housing opportunities for lower-income persons.

(2) *Use.* The HAP is not only a requirement for assistance under this Part, but it serves as the means for HUD to distribute assisted housing resources to applicants. The HAP offers applicants a means to implement strategies to conserve and expand its housing stock in order to provide a decent home in a suitable living environment for all persons, but principally those of lower income. The HAP should facilitate the reduction of the isolation of income groups within communities and geographic areas, affirmatively further fair housing and promote the diversity and vitality of neighborhoods.

(3) *Responsibility of applicant.* Applicants are responsible for implementation of the housing assistance plan in an expeditious manner. This includes the timely achievement of all goals for assisted housing and particularly those which address the needs of families and large families requiring rental assistance. Applicants are expected to take all actions within their control to facilitate the implementation of an approved housing assistance plan including those actions specified in §§ 570.306(b)(3)(iii) and (b)(4)(ii), as well as the development of Section 8 housing when notifications of funding availability are not responded to by private developers.

(4) *Period covered by HAP.* The HAP shall be submitted and be effective for time periods as follows:

(i) Housing Assistance Plans submitted to HUD after the publication date of these regulations but prior to August 1, 1978 shall be designed to complete the requirement that housing assistance provided pursuant to the three-year goals set forth in the HAP approved during 1976 shall have been provided in the same proportion as those goals by household type (elderly and handicapped, families and non-elderly individuals, and large families). Accordingly, applicants shall submit an annual housing action program pursuant to § 570.306(b)(4) which will propose goals for housing assistance to be provided in Federal Fiscal Year 1979 which, when combined with all housing assistance provided in FFY 1977 and 1978 will result in the provision of housing assistance in the same proportion as the three year goals, by household type, set forth in the HAP submitted in 1976. For the purposes of 24 CFR 891, the three-year goal for HAP's submitted prior to August 1, 1978 is the three-year goal submitted in the 1976 HAP including any amendments thereto. For example, an applicant which has provided housing assistance primarily for elderly households during FFY 1977 and 1978 is expected to establish goals this year in the annual housing action program for families and large families so that assistance provided during FFY 1977, 1978 and 1979 will be in the same proportion, by household type, as the 1976 three-year goal. In addition, the applicant shall identify general locations for new construction and substantial rehabilitation units or projects. For HAP's submitted prior to August 1, 1978, general locations shall be applicable to the housing assistance goals as described above in this paragraph; however, the requirements for identifying such locations are set forth in § 570.306(b)(3)(ii). Unless there have been substantial changes in the housing conditions and housing assistance needs, an applicant is required to submit only an annual goal and the general locations for proposed new construction and substantial rehabilitation.

(ii) Housing Assistance Plans submitted after August 1, 1978 shall be submitted once every three years as described in § 570.306(b) and shall cover a three year period. However, each annual application shall include an annual housing action program. Although some revision and updating may be necessary during this period because of the availability of new data sources or significant changes in local conditions or needs, the HAP shall be in effect for three program years. A new HAP shall be submitted every third program year thereafter.

(iii) A Hold Harmless Entitlement applicant submitting a HAP after August 1, 1978, but not proposing to apply for a grant under Subpart F of these regulations during its phase out year, is subject to this section except that the establishment of a three-year numerical goal as described in § 570.306(b)(3)(i) is not applicable.

(5) *Relationship to previously approved HAP's.* (Effective August 1, 1978.) Applicants are not relieved of their responsibilities to continue to address goals established to meet the needs for assisted housing identified in prior program years. Accordingly, applicants who had approved component goals designed to address the needs of a particular tenure type (owner or renter), household type, (elderly and handicapped, family and non-elderly individuals, or large family), or housing type (existing, substantial rehabilitation, or new construction), or any combination of the above, which have not been substantially met, shall include goals to meet such needs prior to providing further assistance for tenure, household, or housing types for which established goals have been substantially met. For example, an applicant which has identified a substantial need, and established goals for families and large families, but nonetheless has met only the goals or a substantial portion of the goals, established for elderly households shall meet the goals established for families and large families before providing additional assistance to elderly households.

(b) *Housing Assistance Plan Content.* The application shall contain a housing assistance plan which includes:

(1) *Housing Conditions.* The applicant shall describe the condition of the existing housing stock in the community by providing a statistical profile by tenure type (owner and renter), which describes housing conditions by number of units in standard and in substandard condition. If a housing rehabilitation program is proposed as part of the applicant's strategy statement as set forth in § 570.304(b), the number of units which are suitable for rehabilitation shall be stated. Estimates shall be made of vacancy rates for non-seasonal available units in standard condition, using the best estimate at the time the application is prepared, but in no case including units to be vacant at a future date.

(2) *Housing Assistance Needs.* The applicant shall describe the housing assistance needs of lower income persons.

The data for such description generally shall be derived from Federal census data; except that the applicant may also utilize other more recent data generally available from public or private sources, including areawide, regional, or State planning agencies; provided that the deviations from estimates derived from the Federal census data or from areawide, regional, or State planning agency assessments are explained. All applicants which are within the jurisdiction of an areawide planning organization having an approved Areawide Housing Opportunity Plan (AHOP) must use the data presented in the Plan. Applicants which are within the jurisdiction of an areawide planning organization which does not have an approved AHOP should use the same census, areawide, or State data unless more recent, generally available data exist for an individual applicant.

(i) The applicant shall provide estimates of housing assistance needs of lower-income persons currently residing in the community, by tenure type and by household type (lower-income households which are elderly and handicapped, families and non-elderly individuals, and large families), for all households, including those households to be displaced by public action and, where information is available, by private action during the three year program. Such estimates shall also be provided for any identifiable segment of the total group of lower-income households in the community.

(ii) The applicant shall assess the housing assistance needs of lower-income households (by household type for all households and all minority households), who could reasonably be expected to reside in the community.

(A) (Effective August 1, 1978.) An applicant community in a metropolitan area shall utilize the following methodology to derive the minimum estimate of the number of lower-income households who could be expected to reside in the applicant community during the three year period of applicability of the HAP. First, the metropolitan area percentage of lower-income households shall be determined using Section 8 Income Limits. Second, the total number of households in the applicant's jurisdiction shall be determined. Third, the total number of households from step two shall be multiplied by the percentage from step one, the product of which is the total required number of lower-income households. Fourth, the number of lower-income households currently residing in the applicant's jurisdiction shall be determined. Fifth, the number of lower-income households currently residing from step four shall be subtracted from the total required number of lower-income households produced in step three, the remainder of which is to be divided by one minus the metropolitan area percentage of lower-income households, the result being the gross estimate of the number of lower-income households expected to reside in the applicant community. Sixth, applicants shall then determine the estimate of the number of lower-income households who reasonably may be expected to reside by multiplying the gross estimate of the number of lower-income households expected to reside by one-third. This estimate of the number of lower-income households who reasonably may be expected to reside shall be cited in the applicant's assessment of the overall housing assistance needs of lower-income households. An applicant with a gross estimate of the number of households expected to reside of zero as a result of the fifth step in the above methodology is not required to set forth a housing need for an additional number of lower-income households expected to reside. An applicant obtaining a negative gross estimate as a result of the fifth step shall record the gross estimate of the number of households expected to reside as a zero.

EXAMPLE

Step 1. SMSA Y Lower Income Houshold Percentage: 40 percent.

Step 2. City W Total Number of Households currently residing: 5,000.

Step 3. City W Total Number of Households Currently Residing×SMSA Lower-Income Household Percentage=Total required number of lower-income households: 5,000×40%=2,000.

Step 4. City W Total Lower-Income Households Currently Residing: 1,000.

Step 5. (City W Total required number of lower-income households—City W Lower-Income Households Currently Residing)/(1—SMSA Lower-Income Households Percentage)=Gross Estimate of Lower-Income Households. Expected to Reside: (2,000−1000)/(1−40%)=1,000/60%=1,667.

Step 6. City W gross estimate of the number of lower-income households expected to reside/3=the estimate of the number of lower-income households who reasonably may be expected to reside 1,667/3=556.

(B) An applicant in a nonmetropolitan area, for which relevant Federal census data are not available, shall submit its best estimate of the number of lower-income households who reasonably could be expected to reside in the community, based on data generally available from Federal, State, areawide, or local sources.

(iii) *Use of alternative methodologies for determining estimates of lower-income households expected to reside developed by State or areawide planning organizations;* (Effective August 1, 1978.) HUD may, at its option, determine that a State or an areawide planning organization has developed an alternative methodology for one or both of these elements which evidences compliance with the objectives of this Part and is a more precise means to measure such needs within the specific geographic area of its jurisdiction. The basis for such determinations are set forth in 24 CFR Part 891, Subpart E. Having so determined, HUD may, at its option, authorize the use of such methodology, in lieu of the methodology set forth in § 570.306(b)(2)(ii), by all applicants within the jurisdiction of such areawide planning organizations.

(A) HUD shall inform all affected applicants, by publication of a Notice in the FEDERAL REGISTER, of those State or areawide planning organizations where an alternative methodology has been approved by HUD and whether such methodology will be used in lieu of the methodology set forth in § 570.306(b)(2)(ii).

(B) In determining whether an alternative methodology developed by a State or an areawide planning organization is to be used in lieu of a methodology set forth in this Part, HUD will consider whether such alternate methodology provides the estimates required to meet the standards of acceptability set forth in paragraphs (b) and (c) of this section and is statistically and mathematicially sound.

(C) HUD shall monitor the estimates developed through an approved State or areawide planning organization alternative methodology. Although areawide organizations are encouraged to develop methodologies which are innovative in scope and suited to the circumstances of the jurisdiction of the areawide planning organizations, HUD may withdraw approval of or require modification of an alternative methodology which is determined to produce estimates which are plainly inconsistent with the objectives of this Part.

(iv) In addition, the applicant shall provide a narrative statement which summarizes any special housing conditions in the community and special housing needs found to exist in the total group of lower-income households in the community. Such summary shall include but need not be limited to, discussion of:

(A) Female heads of households;

(B) Individual minority groups;

(C) Handicapped persons;

(D) Special housing conditions such as concentrations of mobile homes; and

(E) Special housing needs related to a community's economic base such as military housing, migrant workers, and retirement centers.

(3) *Three Year Housing Program.* (Effective August 1, 1978 except as provided for paragraph (ii) in § 570.306(a)(4)(i).) The applicant shall describe a three year housing program for implementation of its community development and housing strategy:

(i) *Goals.* The program shall specify, by tenure type, household type, and housing type, a realistic three year goal for the number of dwelling units or persons to be assisted. The statement of the three year goal for assisted dwelling units also shall take into consideration housing conditions with respect to the availability of existing units of standard quality and units suitable for rehabilitation and shall meet the standards set forth in § 570.306(c)(1).

(ii) *General Locations.* The program shall identify the general locations of proposed new construction housing units or projects, and substantial rehabilitation units or projects, for the programs subject to 24 CFR 891 and, to the extent feasible, other assisted housing programs identified in the goals for lower-income persons on maps as called for in § 570.304(d). The locations shall be identified by census tract (or enumeration districts or geo-

graphic quadrants in those jurisdictions where a census tract includes a substantial area, such as an entire community). General locations for housing projects shall contain at least one site which conforms to the site and neighborhood standards established for the appropriate HUD assisted housing program. Where an applicant proposes assisted housing resources in areas of concentration of minorities or federally assisted housing, general locations outside of such areas also shall be proposed in order to ensure the provision of assisted housing in a balanced manner.

(iii) *Actions to be taken.* The program shall describe those actions which will be necessary for the applicant to take to address any special housing needs and conditions cited in § 570.306(b)(2)(iv), as well as any actions determined necessary, on the basis of findings of past performance reviews pursuant to Subpart O of these regulations, to achieve the housing assistance goals, and shall set forth a timetable for such actions. In addition, applicants anticipating difficulty in achieving goals in newly prepared HAPs shall set forth actions required to achieve those goals. The actions may include, but are not limited to: (A) acquisition of sites and provision of site improvements for the development of assisted housing; (B) adoption or modification of local ordinances and land use measures to facilitate the development of assisted housing including institution of local referendum actions, where necessary; (C) issuance of appropriate zoning changes, building permits, utility connections and similar administrative requirements; (D) formation of a local housing authority or execution of an agreement with a housing authority having powers to provide assisted housing within the jurisdiction of the applicant; (E) removal of local residency preferences for assisted housing; (F) promotional and assistance activities to encourage developers to initiate assisted housing or to allocate a portion of their planned unsubsidized developments for assisted housing, and to encourage owners to make units available for Section 8 existing housing programs; and (G) measures to reduce the cost of housing development, such as tax abatement, waiver of fees and other administrative costs.

(4) *Annual Housing Action Program.* For each program year as part of the annual submission, the applicant shall describe a program of actions to carry out each program year increment in order to achieve the three year housing program. The annual action program shall:

(i) Specify, by tenure type, household type, and housing type, a realistic annual goal for the number of dwelling units or persons to be assisted, including the relative proportion of new, rehabilitated, and existing units best suited to the needs of lower-income persons indentified by the applicant; and

(ii) Set forth specific actions, if any, to be undertaken during the program year to assure the implementation of the three-year housing program including those actions described in paragraph (b)(3)(iii) of this section.

(c) *Standards and criteria for approval of HAPs.* The following standards and criteria shall apply to the reviews and determinations of acceptability of housing assistance plans and shall be effective as of the date of publication of these regulations except as otherwise noted:

(1) *Goals for assisted housing*—(i) *Proportionality.* The three year housing assistance goals shall address the needs of the three household types (elderly and handicapped, families and non-elderly individuals, and large families) within each tenure type (owner and renter) in the same proportion as the total lower-income housing needs identified in the HAP, of those household types, by tenure type. Certain adjustments to this requirement are permitted as follows:

(A) HUD may grant an exception from this requirement when an applicant documents special needs arising from displacement of significant numbers of households of a particular size; natural disasters; meeting the housing requirements of section 105 (f) and (h) of the U.S. Housing Act of 1949, as amended; accommodating proposals for projects of feasible size which could not otherwise be developed; or implementing the goals of a HUD-approved AHOP; or

(B) (Effective August 1, 1978.) Applicants required to emphasize a particular household type or types pursuant to § 570.306(a)(5) shall make no downward adjustment in the percentage represented by such household type, but the percentage represented by other household types may be adjusted downward as necessary. For example, an applicant which has disproportionately met the needs of elderly households in prior years would not be permitted to make any downward adjustment to the percentages represented by family and large family households, but may be required to reduce the percentage represented by elderly households to zero.

(ii) *Tenure types.* The types and quantities of housing assistance proposed by tenure type (owner and renter), shall be appropriate to meeting indentified needs of both renters and owners. In this regard, unless a community can demonstrate that it can meet the needs of households expected to reside through assistance programs for homeowners, such needs shall be assumed to represent needs for rental units.

(iii) (Effective August 1, 1978.) *Minimal goals.* The goals must directly address known needs for housing assistance and contain a sufficient number of units to permit practical and economically feasible housing development. For applicants with are within the jurisidiction of a HUD-approved AHOP, HUD will accept the goals included therein. All other applicants shall propose a three-year housing assistance goal which represents assistance for at least 15 percent of the total need unless the applicant can demonstrate to the safisfaction of HUD that such a goal would be infeasible. The standard that housing assistance plans with only minimal housing assistance goals are plainly inappropriate recognizes that communities with very substantial housing assistance needs have a responsibility to propose substantial housing assistance goals and that goals should reflect the desirability of meeting a significant percentage of identified needs at an early date.

(iv) *Vacancy rates.* In establishing goals for assisted housing, the applicant shall consider the vacancy rate established pursuant to § 570.300(b)(1) and shall estimate the number of such vacant units which would be adequate to meet the needs of lower-income households.

(A) In those cases where there exists a less than adequate vacancy rate (as determined by HUD) in housing units resulting in an insufficient number of vacant, standard, available units of appropriate size, cost, and type to meet the identified housing assistance needs for rental units for lower-income households goals for housing assistance shall emphasize a program of new construction of rental units for households of lower-income. For example, an applicant with a significant number of lower-income households expected to reside in the community and a less than adequate rental vacancy rate, would be expected to emphasize a program of new construction of rental units to address this need. However, this does not preclude the use of a vehicle such as the Section 8 Existing Housing program to address the needs of households currenty residing in the community, provided that the existing program is used in concert, during the three year program, with new construction and/or substantial rehabilitation so that the housing market will not be further imbalanced.

(B) In those cases where there exists an adequate vacancy rate as determined by HUD in standard housing units creating a sufficient number of vacant, available units of appropriate size, cost, and type to meet the identified housing assistance needs of lower-income persons for rental units, goals for housing assistance shall emphasize a program of existing housing for persons of lower-income.

(v) *Urban renewal completion.* Applicants engaged in the completion of Urban Renewal projects and having to meet requirements of Sections 105 (f) and (h) of the U.S. Housing Act of 1949 as amended, or applicants obligated to meet such requirements under close-out agreements pursuant to § 570.804 for projects which have been settled financially, shall establish goals large enough to meet such obligations.

(vi) *Adequacy of rehabilitation.* In order to be included as goals in a Housing Assistance Plan any units proposed to be rehabilitated for either owners or renters must be units which are determined by the applicant to be substandard, and upon completion of rehabilitation, will meet, at a minimum, Section 8 Existing Housing Quality Standards pursuant to 24 CFR § 882.109, and be occupied by lower-income households. Any units proposed for rehabilitation using Federal assistance, shall upon completion meet the standards of the applicable Federal program where they exceed Section 8 Existing Housing Quality Standards.

(vii) (Effective August 1, 1978.) *Relationship to previously approved goals.* Where an applicant does not provide goals to meet unfulfilled needs in accordance with § 570.306(a)(5), such housing assistance goals will be determined to be plainly inappropriate.

(viii) *Local actions to implement goals.* An applicant shall make all efforts to meet the goals in its three year housing program. When actions such as acquisition of land, formation of a housing authority or rezoning are necessary for the development of housing, such actions should be accomplished by the second year of the three year housing program. HUD shall consider an applicant's past performance in providing assisted housing pursuant to the performance standards for implementing housing assistance plans set forth in § 570.909 in determining whether the housing assistance goals are appropriate. In those instances where an applicant's performance in the past indicates that local actions are required to facilitate delivery of housing resources, but the applicant does not provide that such actions will be undertaken on a timely basis, the goals will be determined to be plainly inappropriate.

(ix) *Consistency with areawide housing opportunity plans.* A housing assistance plan of a community which is within the jurisdiction of an areawide planning organization, shall be consistent with the approved Areawide Housing Opportunity Plan prepared by the areawide planning organization pursuant to 24 CFR Part 891.

(2) *General locations.* The applicant shall demonstrate by its selection of general locations that its HAP will promote greater spatial deconcentration of housing opportunities for lower-income persons, particularly minorities.

§ 570.307 Certifications.

The applicant shall submit certifications each year providing assurances that:

(a) It possesses legal authority to apply for the grant, and to execute the proposed program.

(b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(c) It has complied with all the requirements of OMB Circular No. A-95 as modified by this Part and that either:

(1) Any comments and recommendations made by or through clearinghouses are attached and have been considered prior to submission of the application; or

(2) The required procedures have been followed and no comments or recommendations have been received.

(d) Prior to submission of its application, the applicant has:

(1) Prepared a written citizen participation plan, which:

(i) Provides an opportunity for citizens to participate in the development of the application, encourages the submission of views and proposals, particularly by residents of blighted neighborhoods and citizens of low- and moderate-income, provides for timely responses to the proposals submitted, and schedules hearing at times and locations which permit broad participation;

(ii) Provides citizens with adequate information concerning the amount of funds available for proposed community development and housing activities, the range of activities that may be undertaken, and other important program requirements;

(iii) Provides for public hearings to obtain the views of citizens on community development and housing needs; and

(iv) Provides citizens with an opportunity to submit comments concerning the community development performance of the applicant:

(2) Followed this plan in a manner to achieve full participation of citizens in development of the application. The applicant shall also follow this plan to achieve full citizen participation in all other stages of the program.

NOTE.—The above certification on citizen participation is effective August 1, 1978. For applications submitted to HUD prior to August 1, 1978, the certification requirement of § 570.303(e)(4) published in the FEDERAL REGISTER (41 FR 4135) on January 28, 1976, shall apply.

(e) Its chief executive officer or other officer of applicant approved by HUD:

(1) Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 insofar as the provisions of such Act apply to this Part;

(2) Is authorized and consents on behalf of the applicant and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

(f) The Community Development Program has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight.

[The requirement for this certification will not preclude the Secretary from approving an application where the applicant certifies, and the Secretary determines, that all or part of the Community Development Program activities are designed to meet other community development needs having a particular urgency as specifically explained in the application in accordance with § 570.302(f).]

(g) It will comply with the regulations, policies, guidelines and requirements of OMB Circular No. A-102, Revised, and Federal Management Circular 74-4 as they relate to the application, acceptance, and use of Federal funds under this Part.

(h) It will administer and enforce the labor standards requirements set forth in § 570.605 and HUD regulations issued to implement such requirements.

(i) It will comply with all requirements imposed by HUD concerning special requirements of law, program requirements, and other administrative requirements, approved in accordance with OMB Circular No. A-102 Revised.

(j) It will comply with the provisions of Executive Order 11296, relating to evaluation of flood hazards and Executive Order 11288 relating to the prevention, control, and abatement of water pollution.

(k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Part to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A-117.1-R 1971, subject to the exceptions contained in 41 CFR 101-19.604. The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

(l) It will comply with:

(1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), and the regulations issued pursuant thereto (24 CFR Part 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.

(2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing; and will take action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services.

(3) Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR Part 570.601), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under this Part.

(4) Executive Order 11063 on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance.

(5) Executive Order 11246, and the regulations issued pursuant thereto (24 CFR Part 130 and 41 CFR Chapter 60), and Section 4(b) of the Grant Agreement, which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts. Contractors and subcontractors on Federal and federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.

(m) It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, requiring that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing in the area of the project.

(n) It will:

(1) To the greatest extent practicable under State law, comply with Sections 301 and 302 of Title III (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and will comply with Sections 303 and 304 of Title III, and HUD implementing instructions at 24 CFR Part 42; and

(2) Inform affected persons of their rights and of the acquisition policies and procedures set forth in the regulations at 24 CFR Part 42 and § 570.602(b).

(o) It will:

(1) Comply with Title II (Uniform Relocation Assistance) of the Uniform Relocation Assistance and Real Property Acquistion Policies Act of 1970 and HUD implementing regulations at 24 CFR Part 42 and § 570.602(a);

(2) Provide relocation payments and offer relocation assistance as described in Section 205 of the Uniform Relocation Assistance Act to all persons displace as a result of acquisition of real property for an activity assisted under the Community Development Block Grant Program. Such payments and assistance shall be provided in a fair and consistent and equitable manner that insures that the relocation process does not result in different or separate treament of such persons on account of race, color, religion, national origin, sex, or source of income;

(3) Assure that, within a reasonable period of time prior to displacement, comparable decent, safe and sanitary replacement dwellings will be available to all displaced families and individuals and that the range of choices available to such persons will not vary on account of their race, color, religion, national origin, sex, or source of income; and

(4) Inform affected persons of the relocation assistance, policies and procedures set forth in the regulations at 24 CFR Part 42 and § 570.602(a).

(p) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(q) It will comply with the provisions of the Hatch Act which limits the political activity of employees.

(r) It will give HUD and the Comptroller General through any authorized representatives access to and the right to examine all records, books, papers, or documents related to the grant.

(s) It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the program are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify HUD of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

(t) It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973. Pub. L. 93-234, 87 Stat. 975, approved December 31, 1973. Section 103(a) required, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area, that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

(u) It will, in connection with its performance of environmental assessments under the National Environment Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470), Executive Order 11593, and the Preservation of Archeological and Historical Data Act of 1966 (16 U.S.C. 469a-1, et. seq.) by (a) consulting with the State Historic Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (See 36 CFR Part 800.8) by the proposed activity, and (b) complying with all requirements established by HUD to avoid or mitigate adverse effects upon such properties.

§ 570.308 Timing of application submissions.

(a) *Submission of applications.* (1) In order to receive an entitlement grant under this Part, each applicant is required to submit an application at least 75 days, but no more than 120 days, prior to the end of its program year.

(2) An applicant which did not receive an entitlement grant in the previous fiscal year must apply no later than April 30.

(3) Notwithstanding other provisions of this section, no application will be accepted between July 15 and October 1, in any year.

(b) *Program year.* A program year shall run for a twelve month period. An applicant may, however, either shorten or lengthen its program year by as much as three calendar months, provided:

(1) It is for the purpose of conforming the program year to State or local or fiscal budgeting requirements; and

(2) HUD receives written notice of a shortened program year at least six months prior to the date the program year would have ended if it had not been shortened, or in the case of a lengthened program year, at least three months prior to the date the program year would have ended if it had not been lengthened. An applicant may not however, receive more than one entitlement grant from a single Federal fiscal year appropriation.

§ 570.309 Public availability of and objections to application [Reserved]

§ 570.310 A-95 clearinghouse review and comment.

Applicants must comply with the procedures set forth in Part I of OMB Circular No. A-95 except as modified below. In addition to rules governing applications, these procedures also require that program amendments submitted to HUD in accordance with § 570.312 shall be submitted to appropriate clearinghouses for a 30-day review and comment period.

(a) *Clearinghouse notification.* The A-95 requirement that clearinghouses be notified of an applicant's intent to apply for Federal assistance will be satisfied by HUD. Each fiscal year HUD will advise the appropriate State and areawide clearinghouses, with a copy to the applicant, of those communities entitled to receive grants under this Part. This notification will be provided at least 60 days prior to the date by which the applicant must submit the completed application to HUD. Upon receipt of its copy of the HUD notification to the clearinghouses, the applicant shall make arrangements with the clearinghouses regarding early transmittal of information describing the contents of the application. An applicant wishing to submit its application to HUD before February 1 of each year shall provide its own notice of intent to file with the appropriate clearinghouses in accordance with the usual A-95 procedures.

(b) *Clearinghouse review of application.* Unless the requirement is waived by a clearinghouse, the applicant shall provide the clearinghouses a period of 45 calendar days to review the completed application and transmit to the applicant any comments or recommendations. Clearinghouses will be of assistance to both the applicant and HUD if their reviews address the application approval criteria contained in § 570.311(c), as well as the "subject matter of comments and recommendations" in Part I, Attachment A of OMB Circular No. A-95, item 5. Emphasis should be placed on consistency among State, areawide and local plans and strategies. Compliance with environmental and civil rights laws should also be emphasized.

(c) *Applicant actions after clearinghouse review.* The applicant shall include with its application to HUD all clearinghouse comments, or when no comments are received, a statement that no comments or recommendations have been received from the clearinghouses. Where activities are determined by the area wide planning agency to be inconsistent with areawide plans, the applicant shall provide in the application to HUD an explanation of the reasons for the inconsistencies.

(d) *Application modification during clearinghouse or HUD review.* An applicant which revises its application while it is under review by a clearinghouse or by HUD shall inform the clearinghouses of the revisions and, if the application has been submitted to HUD, the number of days remaining within the 75-day review period described in § 570.311(d), for HUD to complete its review of the application.

§ 570.311 HUD review and approval of application.

(a) *Acceptance of application.* (1) Upon receipt of an application, the HUD Area Office will accept it for review, provided that:

(i) It has been received before the deadline for receipt of applications established in § 570.308(a);

(ii) All of the required component parts of the application are submitted and are properly completed;

(iii) The funds requested do not exceed the entitlement amount;

(iv) Any comments and recommendations received from clearinghouses, or a statement that no comments were received, are attached to the application; and

(v) Any additional assurances previously required as a result of monitoring, inadequate local performance, or audit findings, are included.

(2) If the application is accepted in accordance with the preceding paragraph, the date of acceptance of the application will be the date of receipt of the application in the HUD field office, and the applicant will be so notified in writing. If the application is not accepted for review, the applicant will be so notified in writing, and will be advised of the specific reasons for nonacceptance.

(b) *Scope of review.* (1) HUD will normally base its review upon the applicant's certifications, statements of facts and data, and other information. The Secretary reserves the right, however, to consider relevant evidence which challenges the certifications, and information submitted by the applicant, and to require additional information or assurances from the applicant as warranted by such evidence.

(2) The review will include, but need not be limited to, the following matters contained in the application and the grantee performance report, or derived from monitoring:

(i) Eligibility of proposed activities;

(ii) Program benefit to low- and moderate-income persons in accordance with the provisions of § 570.302;

(iii) Housing Assistance Plan conformity to the requirements of § 570.306;

(iv) Coordination of housing assistance and community development activities;

(v) Consistency of the needs stated in the plan with generally available data;

(vi) Appropriateness of proposed plans and programs to meeting the applicant's needs and objectives;

(vii) Compliance with previous contract conditions or other corrective and remedial actions required by HUD;

(viii) Experience regarding the effectiveness of the proposed activities in meeting the community development needs in the locality;

(ix) Applicant's capacity to carry out the program proposed as evidenced by its previous performance record; and

(x) Compliance with the requirements of this Part and other applicable laws and regulations.

(c) *Criteria for disapproval.* The Secretary will approve the application unless:

(1) On the basis of significant facts and data, generally available, and pertaining to community and housing needs and objectives, the Secretary determines that the applicant's description of such needs and objectives is plainly inconsistent with such facts and data. The data to be considered may be published data accessible to both the applicant and the Secretary, such as census data, or other data available to both the applicant and the Secretary, such as recent local, areawide or State comprehensive planning data.

(2) On the basis of the application, the Secretary determines that the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant. The following are examples of situations in which activities may be determined to be "plainly inappropriate" to meeting the identified needs of the applicant:

(i) Experience over a period of time has demonstrated that the types of activities proposed have not been or are

unlikely to be effective in alleviating the conditions they were designed to affect;

(ii) The applicant has identified areas containing significant concentrations of deteriorated housing and blight and does not propose to undertake a concentrated program of activities in any such areas;

(iii) The proposed program does not principally benefit low- and moderate-income persons under the requirements of § 570.302;

(iv) Proposed activities will have a detrimental effect on low- and moderate-income persons or members of minority groups and adequate measures to mitigate such effects are not proposed;

(v) Housing goals, locations, and strategy do not meet the criteria of § 570.306(c);

(vi) Actions essential to accomplish housing assistance goals, including supportive community development activities, are not proposed;

(vii) The proposed program does not reflect previous requirements of the Secretary for corrective or remedial actions, or activities proposed have previously been the basis of such requirements.

(3) The Secretary determines that the application does not comply with the requirements of this Part with specific regard to the primary purposes of principally benefitting persons of low- and moderate-income or aiding in the prevention or elimination of slums or blight, or other applicable law, or proposes activities which are ineligible under this Part.

(d) *Timing.* The Secretary will notify the applicant in writing within 75 days, but not less than 45 days, of the date of receipt of the application, that the application has been either approved or disapproved. In the event the Secretary has not mailed a notification to the applicant within 75 days from the date of acceptance of a completed application the application shall be deemed to be approved. If the application is disapproved the applicant shall be informed of the specific reasons for disapproval.

(e) *Reduction of grant.* The Secretary may approve an application for an amount less than the full entitlement for the following reasons:

(1) Activities are not eligible under Subpart C and funds are not reprogrammed to eligible activities within the 75-day review period;

(2) Activities do not meet other program requirements, such as benefits to low- and moderate-income persons described in § 570.302; or

(3) The recipient's performance does not meet the standards prescribed in § 570.909 and a reduction is appropriate pursuant to § 570.911.

(f) *Conditional approval.* The Secretary may make a conditional approval, in which case the full entitlement amount will be approved but the obligation and utilization of funds for affected activities will be restricted. Conditional approvals may be made where:

(1) Local environmental reviews under § 570.603 have not yet been completed;

(2) The requirements of § 570.607 regarding the provision of public services and flood or drainage facilities have not yet been satisfied; or

(3) There is substantial evidence that there has been, or there will be, a lack of substantial progress, nonconformance, noncompliance, or a lack of continuing capacity, as described in § 570.909. In such case, the reason for the conditional approval and the actions necessary to remove the condition shall be specified. Failure to satisfy the condition may result in a reduction in the annual grant amounts pursuant to §§ 570.910(b)(10) or 570.911.

§ 570.312 Amendments.

(a) *Community Development Program amendments.* A recipient shall submit an amended application to the HUD Area Office when:

(1) The recipient proposes to use more than 10 percent of the entitlement amount approved for the affected program year to undertake one or more new activities, other than local option activities pursuant to § 570.600 and disaster activities pursuant to 24 CFR § 58.6.

(2) The recipient proposes to alter the stated purpose, location, or class of beneficiaries of previously approved activities whose cost exceeds 10 percent of the entitlement amount approved for the affected program year.

(3) The combination of proposed new activities (other than local option activities and disaster activities) and changes in the purpose, location, or class of beneficiaries of previously approved activities involves more than 10 percent of the entitlement amount approved for the affected program year.

(4) The cumulative effect of a number of smaller changes involving new activities (other than local option activities and disaster activities) or changes in the purpose, location, or class of beneficiaries of approved activities exceeds 10 percent of the entitlement amount approved for the affected program year. In such instances, the recipient shall include in its request for amendment documentation describing the smaller changes previously made, as well as those being proposed. After the amendment is approved by HUD, the accrual of smaller changes begins again.

(5) The recipient proposes to reduce the amount of funds previously approved for completion of urban renewal projects.

When the recipient proposes to undertake activities which are not consistent with the three-year project summary included in its community development plan, it shall submit an amended community development plan summary to HUD at the same time the proposed program amendment is submitted.

(b) *Housing Assistance Plan Amendments.* The recipient shall request prior HUD approval of Housing Assistance Plan amendments when any of the following conditions exist:

(1) The recipient proposes a reduction of any goal for housing assistance pursuant to § 570.306(b)(3)(i) or § 570.306(b)(4)(i);

(2) The recipient proposes the inclusion of a goal by household type or housing type, not previously specified pursuant to § 570.306 (b)(3)(i) or (b)(4)(i);

(3) The recipient proposes to exceed any three year goal by housing type or household type by the percentage cited in 24 CFR Part 891;

(4) The recipient proposes a revision of the general locations for assisted housing established pursuant to § 570.306(b)(3)(ii); or

(5) There is a significant change in, or new data available regarding, the conditions of the housing stock or the housing needs of lower-income persons.

(c) *Scope of submission.* Only the following documentation must be submitted in support of a request for an amendment to an approved application:

(1) The elements of the approved application to be changed, such as the affected portions of the annual Community Development Program;

(2) The certifications described in § 570.307; and

(3) Documentation regarding A-95 clearinghouse reviews as described in § 570.310(c).

(d) *Response to requested amendments.* Within 30 days of the date of receipt of the proposed amendment, HUD will notify the recipient in writing that the amendment has been approved, disapproved, or conditionally approved pursuant to § 570.311(f), or, if a final decision on the amendment has not as yet been made, the date by which the recipient will be notified of the final decision. In the event HUD has not mailed a notification to the recipient within that 30-day period, the amendment shall be deemed approved. If the proposed amendment is disapproved, the recipient shall be informed of the specific reasons for disapproval.

(3) *Other changes.* Changes not covered in paragraphs (a) or (b) of this section including local option and disaster activities, do not require prior HUD approval, but shall be reported to HUD as part of the annual performance report described in § 570.906.

(f) *Citizen participation.* All amendments and other changes to the Com-

munity Development Program, community development plan and Housing Assistance Plan require citizen participation. Formal public hearings, however, are required only when prior HUD approval of application amendments is required. Citizen participation requirements do not apply, however, to disaster activities.

(g) *A-95 review.* The recipient shall provide the State and areawide clearinghouses with 30 days for review and comment prior to submission of an application amendment for prior HUD approval.

(h) *Environment.* The recipient shall comply with applicable provisions of 24 CFR Part 58 respecting all amendments.

III. Section 570.906 is revised to read as follows:

§ 570.906 Performance report.

(a) *Submission requirements.* (1) Each entitlement recipient shall submit a performance report to HUD no later than the end of the eighth month of each program year. The report shall cover a twelve month period ending with the sixth month of the program year.

(2) A copy of the performance report shall be submitted to the appropriate A-95 State and areawide clearinghouses for informational purposes at the time it is submitted to HUD.

(3) The recipient shall make the report available to citizens at no charge and shall make public notice of the availability of the report at the time it is submitted.

(4) The requirements for submission of performance reports by discretionary grant recipients are set forth in § 570.400(h).

(b) *Content of report.* The report shall include the following components in a format to be prescribed:

(1) *Progress on planned activities.* The report shall describe progress on each project and activity that was to be carried out under approved applications since the inception of the applicant's block grant program, excluding projects or activities reported as completed in a previous report. The report shall list each project and activity by the program year in which it was approved and provide cumulative information on the following:

(i) Amount of funds obligated and expended;

(ii) Environmental status including the date of HUD release of funds;

(iii) The administrative unit having lead responsibility;

(iv) The steps taken to carry out the project, such as advertisement for bids, completion of a specified percentage of construction, etc.

(2) *Recipient assessment.* The report shall include the recipient's assessment of the effectiveness of the program of community development activities conducted under this Part in meeting local needs and objectives and national objectives of the block grant program.

(3) *Persons benefitting.* The report shall include an analysis of the persons actually benefitting from activities carried out under the program.

(4) *Housing assistance.* The applicant shall describe progress in carrying out the Housing Assistance Plan, including actions taken to further fair housing.

(5) *Citizen participation.* The applicant shall describe the actions it has taken to comply with the requirements of § 570.303, and include (i) copies of comments submitted by citizens regarding the applicant's community development performance; (ii) the applicant's assessment of such comments; and (iii) a summary of any actions taken in response to the comments received.

(6) *Equal opportunity.* The applicant shall present evidence of compliance with the certifications required by § 570.307(*l*).

IV. Conforming and technical changes are made to Part 570 as follows:

§ 570.400 [Amended]

1. In § 570.400(a), the reference to "Subparts A, B, C, F, G, H, I, and J" is changed to "Subparts A, B, C, J, K, and O."

2. In § 570.400(f), the reference to "§ 570.306(e)" is changed to "§ 570.311(f)."

§ 570.401 [Amended]

3. In § 570.401(c), the reference to "§ 570.303(e) except for (4) and (6)" is changed to "§ 570.307 except for paragraphs (d) and (f)."

§ 570.403 [Amended]

4. In § 570.403(c)(3), the reference to "§ 570.303(e) (1), (3), (5) if applicable, (7), (8), (11), (12) if applicable, and (13) if applicable" is changed to "§ 570.307 (a), (c), (e) if applicable, (g), (h), (l), (m), (n) if applicable and (o) if applicable."

5. In § 570.403(e)(2), the reference to "Subpart G" is changed to "Subpart K."

§ 570.404 [Amended]

6. In § 570.404(b)(3)(A), the reference to "§ 570.303(b)" is changed to "§ 570.305."

7. In § 570.404(b)(3)(B), the reference to "§ 570.303(c)" is changed to "§ 570.306(b)."

8. In § 570.404, paragraph (b)(3)(c) is deleted and reserved.

9. In § 570.404(b)(3)(D), the reference to "§ 570.303(e), except for (e)(4)" is changed to § 570.307, except for paragraph (d)."

10. In § 570.404(c)(4)(ii)(B), the reference to "§ 570.303(b)" is changed to "§ 570.305."

11. In § 570.404, paragraph (c)(4)(ii)(D) is deleted and reserved.

12. In § 570.404(c)(4)(ii)(E), the reference to "§ 570.303(e), except for (e)(4)" is changed to "§ 570.307, except for paragraph (d)."

§ 570.405 [Amended]

13. In § 570.405, the reference to "§ 570.303" is changed to "Subpart D."

§ 570.406 [Amended]

14. In § 570.406(c)(5), the reference to "§ 570.303(e), except for (4) and (6)" is changed to "§ 570.307, except for paragraphs (d) and (f)."

§ 570.407 [Amended]

15. In § 570.407(e), the reference to "§ 570.303" is changed to "Subpart D."

16. In § 570.407(e)(1), the references to "§ 570.303(a)" and "§ 570.303(b)" are changed to "§ 570.304" and "§ 570.305," respectively.

17. In § 570.407(e)(3), the reference to "§ 570.303(c)" is changed to "§ 570.306(b)."

18. In § 570.407(e)(4), the reference to "§ 570.303(e), except for (4) and (6)" is changed to "§ 570.307, except for paragraphs (d) and (f)."

§ 570.503 [Amended]

19. In § 570.503(a), the reference to "§ 570.306(e)" is changed to "§ 570.311(f)."

§ 570.504 [Amended]

20. In § 570.504, the reference to "§ 570.306(e)," is changed to "§ 570.311(f)."

§ 570.600 [Amended]

21. In § 570.600, the references to "§ 570.303(b)" and "§ 570.306(e)" are changed to "§ 570.305" and "§ 570.311(f)," respectively.

§ 570.804 [Amended]

22. In § 570.804(b), the references to "§ 570.305," "§ 570.303," "§ 570.306," and "§ 570.303" are changed to "§ 570.312," "§ 570.300(b) or (c)," "§ 570.311," and "§ 570.300(c)," respectively.

23. In § 570.804(b)(7)(ii), the reference to "§ 570.303(c)" is changed to "§ 570.306."

24. In § 570.804(b)(7)(vi), the reference to "Subpart J" is changed to "Subpart O."

§ 570.900 [Amended]

25. In § 570.900, paragraph (d) is deleted.

§ 570.907 [Amended]

26. In § 570.907(b), the reference to "§ 570.900(d)" is changed to "§ 570.303."

27. In § 570.907(c), the reference to "§ 570.303(b)" is changed to "§ 570.305."

§ 570.909 [Amended]

28. In § 570.909(f)(1), the reference to "§ 570.305" is changed to "§ 570.312."

29. In § 570.909(f)(1)(i), the references to "§ 570.303(e)(6)" and "§ 570.305" are changed to "§ 570.307(f)" and "§ 570.312," respectively.

§ 570.910 [Amended]

30. In § 570.910(b)(4), the reference to "§ 570.306(b)(1)" is changed to "§ 570.311(b)(1)."

31. In § 570.910(b)(9), the reference to "§ 570.306(e)(3)" is changed to "§ 570.311(f)(3)."

32. In § 570.910(b)(10), the reference to "§ 570.306(e)(3)" is changed to "§ 570.311(f)(3)."

33. In §§ 570.403(e)(1), 570.502(a)(2), 570.505, 570.506 (a) and (b), 570.507, 570.508, 570.512(d), 570.905(b), and 570.907(a), the reference to "Federal Management Circular 74-7" is changed to "OMB Circular No. A-102."

[Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).)]

Issued at Washington, D.C., February 22, 1978.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-5180 Filed 2-23-78; 2:24 pm]

federal register

WEDNESDAY, MARCH 1, 1978

PART V



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

■

COMMUNITY DEVELOPMENT BLOCK GRANTS

Small Cities Program

[4210-01]

Title 24—Housing and Urban Development

CHAPTER V—OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-485]

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart F—Small Cities Program

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This rule prescribes the mechanisms for distribution by HUD of discretionary community development block grants as authorized by section 106 of the Housing and Community Development (HCD) Act of 1974. The discretionary program, now designated the Small Cities Program, has been substantially revised to incorporate both the statutory changes included in the 1977 Housing and Community Development Act and new administrative initiatives.

EFFECTIVE DATE: March 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Subpart F: James N. Forsberg, Program Standards Division, Office of Community Planning and Development, Department of Housing and Urban Development, Washington, D.C. 20410, 202-755-6306.

SUPPLEMENTARY INFORMATION: On November 18, 1977, the Department of Housing and Urban Development published in the FEDERAL REGISTER (42 FR 59654) proposed rules for the Small Cities Program, Subpart F of 24 CFR Part 570. Regulations governing the discretionary balances grants were previously contained in Subpart E, §§ 570.400 thru 570.402, which the Department published in the FEDERAL REGISTER on October 18, 1976. Interested persons were given until December 19, 1977, to comment on proposed Subpart F.

Approximately 350 comments were received concerning the proposed regulations. After full and careful consideration of these public comments, we have made the following changes in developing the final rule:

§ 570.420 GENERAL

Section 570.420 contained general information and set out the basic framework for the Small Cities Program.

Subsection (b) outlined the overall objectives for the Small Cities Program. Several additions to these objectives were suggested by the comments and clarification of the existing objectives requested. Although we have decided not to expand the list, we have altered the language to make the objectives clearer and more applicable to small communities.

Subsection (c) defined eligible applicants. We have changed the wording to specify that units of government participating in either an urban county or a metropolitan city are not eligible. Some respondents requested that hold-harmless communities participating with an urban county only for the purpose of meeting the 200,000 population level should still be eligible to apply for discretionary funds. We do not believe, however, that such a result is legally permissible or administratively desirable.

Subsection (d) defined the two types of programs—Comprehensive and Single Purpose—available to small cities. For purposes of clarification, this subsection has been abbreviated to contain only a general statement as to the existence and focus of these two elements, with the revised definitions now contained in § 570.423 and § 570.427 respectively.

Subsection (e) established a system for division of funds between the Comprehensive and Single Purpose elements based generally on the relative dollar demand within each competing jurisdiction, with an anticipated minimum reservation of 30 percent for each in most cases. The comments were divided between favoring more funds for Comprehensive and seeking a higher guarantee for Single Purpose. This section has been completely revised to state that 25 to 35 percent of the funds will be reserved for the Single Purpose Program, with the remainder reserved for the Comprehensive Program, except where the demand for Comprehensive Grants would not justify a 65 percent reservation or would justify a reservation of more than 75 percent. There is no demand experience on which to make allocations to the two programs at this time. We will examine the demand in programs this fiscal year for use in allocating funds between programs in subsequent years.

Subsection (f) covered grant amounts for each competition pool and for individual applicants. In response to comments received, the reference to minimum grants has been removed and the language concerning maximum grants has been changed to refer to general ceilings per applicant. Separate ceilings are allowed for multiyear commitments and joint applications. Although the reference to Regional and Area Offices has been eliminated, we intend that the establishment of ceilings be done primarily by our field offices. Specific suggestions, such as basing ceilings on population levels, will be utilized where we find them appropriate.

Subsection (g), which covered access to programs, now permits States, and counties applying in behalf of other units of government, to submit preapplications for both Comprehensive and Single Purpose Grants, as suggested by several commenters.

Subsection (h) concerned the method for selecting grantees. Several commenters felt that the Area Offices were given too much discretion in rejecting data submitted. The entire reference to rejection of data has been eliminated. In addition, the final documentations of HUD decisions on data will be available to the general public, not just interested applicants.

Subsection (j) placed restrictions on communities with previous audit findings. A number of comments opposed this subsection, with some charging that we were discriminating against small communities since no similar provision is applied to entitlement recipients. We believe, however, that this restriction, with its waiver provision, is an appropriate and useful check on past participants in HUD programs. The analogy to the entitlement program is not persuasive since we have other measures not applicable to the discretionary program that can be taken against entitlement grantees to correct such situations. The degree of seriousness and the timing of such audit findings, which were factors mentioned in the comments, will be considered in granting waivers.

Subsection (k)—Program benefit to low- and moderate-income persons—has been redesignated "Program Design" and has been rewritten to better express our position with respect to program benefits.

§ 570.421—APPLICATIONS BY STATES AND COUNTIES; JOINT APPLICATIONS

This section set out the guidelines and ground rules for applications by States and counties in behalf of themselves or other units of local government within their jurisdiction and for joint applications by units of local government.

A large number of general comments on this section suggested that these types of applications, particularly joint applications, should be given extra points in the rating system. While we do wish to encourage such applications where the local needs and administrative capacities make them appropriate, we do not want them to be used simply as a means for scoring more points. Where these applications are indeed appropriate, the potential increase in points that are directly related to the design and impact of the proposed program should be a sufficient and effective incentive for cooperative efforts.

Subsection (b) required written agreements between the units of government paritcipating in an "in behalf of" application. Consistent with one comment, the paragraph has been

changed to make clear that both the preapplication and the application must be pursuant to a written agreement. Another comment recommended that such a written agreement be required between a State and the local government(s) where the proposed activities are to be carried out even when the State application is in behalf of itself. This suggestion was not adopted. State law may permit unilateral State action, and while HUD certainly encourages cooperation between States and their local governments, we do not wish to limit existing State authority to carry out community development activities.

As suggested in the comments, Subsection (c) has been revised to indicate that the written agreement required for joint applications must cover both the preapplication and application and must be submitted with the preapplication.

Subsection (d) has been revised in response to comments to state explicitly that only units of general local government included in a State or county application "in their behalf" are prohibited from submitting their own preapplication.

Subsection (e) proposed that only data from those incorporated and unincorporated areas where community development activities were proposed would be used in the selection criteria for county, State and joint applications. Several comments raised questions as to what this restriction meant and how it would be administered. The final rule is more explicit as to what data will be considered and distinguishes between county and State applications in behalf of themselves and applications from these entities in behalf of units of general local government or joint applications.

Subsection (e) also provided that county, State, and joint preapplications would be rated separately for the needs selection factors where their accumulated population covered by the preapplication was substantially larger than the average population of the other applicants against whom they were competing. A large number of comments expressed uncertainty as to exactly what this meant or how it would be implemented, and some comments claimed that a separate ranking would discourage such applications. It was suggested that such a separate ranking was unnecessary since only data from the area in which activities were proposed would be used for these selection criteria. This separate ranking process is now described in Sections 570.424 and 570.428, and has been limited to preapplications from counties and States in behalf of themselves, State preapplications in behalf of counties, and joint preapplications in which a county is participating.

Subsection (f) provided information related to the submission of a Housing Assistance Plan (HAP) with county, State or joint applications. In response to Several comments, the language of this subsection has been revised to better express the intended meaning.

Subsection (g) has been clarified to indicate that the restriction on the use of funds applies to units of general local government "participating" (formerly "included") in an urban county or metropolitan city.

§ 570.422 STATE PARTICIPATION

We are still considering the comments received on State Participation as a result of the solicitation contained in the preamble to the proposed rule which was published November 18, 1977.

§ 570.423 COMPREHENSIVE PROGRAM GENERAL REQUIREMENTS

This section, which included the basic standards for Comprehensive Grants, has been substantially reorganized and revised.

The definition of a Comprehensive Program in subsection (a) has been refined. In response to comments, the requirement that the program provide for lower income housing has been eliminated since it is adequately covered by the Housing Assistance Plan mandate.

Subsections (b), (c) and (d) of proposed § 570.423, have been eliminated. The portions of these subsections that are still relevant have been incorporated where appropriate in those subsections dealing with funding decisions. Section 570.423 now also contains those portions of proposed Sections 570.424 and 570.425 that have been retained, and § 570.424 et seq. have been renumbered accordingly.

Subsection (b) now covers funding commitments. In response to numerous comments, it states that HUD may make commitments of up to three years for the Comprehensive Program. Thus all applicants seeking a Comprehensive Grant may request multiyear funding. The factors we will consider in determining the number of years for which a commitment will be made are listed. As required by the 1977 legislation, we will give special consideration for multiyear funding to those hold-harmless communities currently carrying out a comprehensive program which are subject to the phase-out provision.

The references to subsequent funding that were previously in § 570.424(c) are now in subsection (b). Many comments expressed concern about the conditioning of future commitments upon the availability of appropriations. This condition, however, is legislatively mandated. It is intended to limit HUD's obligations in case such funds are not provided by Congress in future years. The reference to the annual Community Development Program has been retained. Submission of this document is necessary to ensure that the actions of the applicant have been and will be consistent with its approved application.

Proposed § 570.425 set forth specific threshold requirements to be satisfied prior to applying for a Comprehensive Grant or a multiyear commitment. Subsection (a) established the following four requirements for Comprehensive Grant applications: 2,500 population (waivable), have previously carried out a community development block grant program, have demonstrated adequate past performance, and have the capacity to undertake the proposed program. The first two of these, particularly the 2,500 figure, generated considerable opposition. After thorough and careful consideration, we have eliminated both of these thresholds. The latter two requirements have been retained in subsection (c).

The additional threshold requirement in Section 570.425(b) for multiyear commitments—that applicants must have previously carried out a comprehensive community development block grant program—has also been removed.

Subsection (c) of § 570.425, now a part of § 570.423(c), set out the factors HUD would consider in evaluating past performance. Based on suggestions submitted, we will consider actions to facilitate the provision of low- and moderate-income housing, instead of just actions to facilitate the accomplishment of HAP goals ((c)(2)(ii)), and we have added development and/or implementation of a section 701 housing and land use element to the list of possible positive actions.

§ 570.424 SELECTION SYSTEM FOR COMPREHENSIVE GRANTS

The criteria for scoring and selecting preapplications for Comprehensive Grants were contained in proposed Section 570.426.

Several commenters expressed confusion over the way need was to be defined in terms of substandard housing in Section 570.426 (c) and (d). Others suggested that communities be permitted to establish their own definition of substandard housing and supply us with that information. Because of this confusion, housing need will now be measured in only two ways—by overcrowding, and by lack of plumbing. This information is supplied by the Bureau of the Census and is available for every potential applicant. It provides a uniform standard for comparing housing needs. To permit individual localities to define housing need would not supply us with standardized, consistent information which would permit us to make valid comparisons. Although we recognize that the Bureau of Census information to

be used is perhaps outdated to some extent, it is the only national data available for this purpose.

Numerous comments were received concerning the weighing of the needs factors in § 570.426 (a-d). Most communities felt that the double weighing of absolute numbers was unfair to smaller communities. We have decided to keep the weighted system because we believe it provides an accurate reflection of relative need among applicants. "Proportion of need" is still included to recognize those situations where a community's needs represent a significant portion of its housing or population. The discretionary selection system has used equal weighing of absolute numbers and proportion in the past, with the results showing an advantage for the smaller communities. Funds to such communities have far exceeded their percentage of the persons residing in cities under 50,000. Greater emphasis on absolute numbers should correct this.

Many comments were received concerning the number of program design criteria (§ 570.426(e)) that had to be addressed by a community. Most communities felt that they could not design a program that addressed six criteria. Therefore, we have reduced the number of criteria that must be addressed to four, with the points adjusted to achieve a better indication of the quality of programs. Several of the criteria have been changed for clarification. Because of comments received, we have also removed the Housing Opportunity Plan and impact beyond the local jurisdiction as separate criteria. Factors which we may consider in assessing a program have been included in § 570.424(e). Although several communities felt the design criteria were developed to express a preference by us for certain activities, this is not the case. The criteria should permit a community to define its own needs and develop a program to address those needs.

Various comments were made concerning the criterion dealing with the impact of the program on other Federal programs or policies. This is one of the factors contained in the statute and must be included in the system. Suggestions were also made to include State programs in this factor. This was rejected because State programs and plans are provided recognition in (e)(1)(viii).

Subsection (f)—benefit to low- and moderate-income persons—has been revised. There was concern that this proposed rule encouraged citywide projects and provided an additional factor that favored the larger communities. Also, in many cases the criteria required considerable data that were not readily available to either the Department or applicants. The new method of assessing benefit will require the applicant to provide an estimate of the amount of the requested funds that will be used to benefit low- and moderate-income persons. Applicants will then be ranked based on the percent of funds requested that will be so used. This will require defining the total beneficiaries of each element of the program and then determining how many of the beneficiaries are of low- and moderate-income. This factor will ensure that those programs providing the greatest benefit to low- and moderate-income persons receive preference.

Several comments expressed concern over the two performance criteria of subsection (g), (previously paragraph h), housing and equal opportunity. We view the housing criteria as an effective way to reward those communities that are taking positive actions to address their low- and moderate-income housing needs. While a community's performance in housing will be evaluated before it will be considered for a grant, these criteria should serve as an additional incentive for communities to actively seek out means and resources for meeting their housing goals. Two of the factors (§ 570.424(g)(1) (i) and (v)) can be met by communities that have not received housing assistance recently, but are taking steps to provide fair housing within their communities.

Many communities expressed concern over the equal opportunity criterion because they did not have minorities in their community and because of the nebulous nature of the standard that would be used to award points. The wording has been changed in (g)(2) to establish a measurable standard that can be used to make the determination. Points may be awarded based on past contracting of the applicant with minority owned, controlled, or managed businesses, and based on the employment of minorities by the applicant. We believe, in view of our equal opportunity objectives, it is very important to reward those communities who have provided opportunities for minorities.

A large number of comments suggested that points be awarded to hold-harmless phase out communities. Others recommended that such communities be guaranteed funding without going through the rating process if they could demonstrate continuing need, with a Letter of Intent submitted in lieu of a preapplication. While we strongly believe that all applicants, including hold-harmless communities, should be awarded grants based on competition, we recognize the legitimate concerns of those communities which are experiencing a phase-out of their assured source of funding. To promote continuity in local programs, subsection (i) now provides 25 points for those communities currently carrying out a comprehensive community development program and which are subject to the phase-out provisions.

Subsection (j) has been amended to include authority for the field offices to invite backup applications.

Concern was expressed that the grouping process used to determine actual points in § 570.426 was too complex and confusing. We also feel that the system might contain some inequities in providing a point spread far in excess of the actual difference between applicants. Therefore, the concept of grouping and assigning points by groupings has been eliminated. In its place, we will use a system whereby points are awarded based on each applicant's comparison with the highest rated applicant for each factor.

§ 570.425 PREAPPLICATIONS FOR COMPREHENSIVE GRANTS

This section, designated § 570.427 in the proposed regulations, describes what must be included in preapplications for Comprehensive Grants. Several commenters suggested elimination of the preapplication for hold-harmless communities and use of the Letter of Intent in lieu of the preapplication. The law specifies certain factors that must be considered in selecting among grantees, and only by rating all grantees against the criteria can the Department determine which applicants most effectively address the criteria and should be invited to proceed with a full application. Both Houses of Congress in their Committee Reports, cited studies indicating that the hold-harmless grants have a very low correlation with communities' development needs. For these reasons, we are requiring the hold-harmless communities to submit preapplications.

Subsection (a) has been changed to refer to OMB Circular A-102 rather than Federal Management Circular 74-7 to reflect the current designation for the document.

Paragraph (a)(2)(iv) has been added to reflect the revised method of assessing benefit under § 570.424(f). Applicants will have to specify the total number of persons benefitting from each component of the program and the number of low- and moderate-income persons benefitting.

Several comments suggested that § 570.426(b) (iii) and (v) were overlapping requirements. Both, however, have been retained in subsection (a). Paragraph (iii) requires only the information pertaining to the Program Factor (§ 570.424(e)), whereas paragraph (v) requests information from those applicants addressing the selection criteria contained in § 570.424 (q) and (h).

Most of the comments on proposed Section 570.426 dealt with subsection (d), Program Benefit to low- and moderate-income persons. Many felt that

this requirement did not give full recognition to the many objectives of the Act, it did not take into account the character of smaller cities where much of the low- and moderate-income population is not concentrated, and would not permit applicants to design a program to address their most critical needs. Others suggested that the "exception" category be expanded to perhaps 30 percent.

In view of the changes that have been made in § 570.424(e), Program Design Criteria, which relate the criteria to the impact of the program on low- and moderate-income persons, and the revised method used to measure benefit under § 570.424(f), which will look at the percent of dollars a community requests which will benefit low- and moderate-income persons, the requirements contained in § 570.426(d) have been removed from the Small Cities regulations. Thus, even though we have removed the strict rule that no more than 25 percent of the funds be used for activities which do not benefit low- and moderate-income persons, the selection system is designed to select those applicants that meet the needs of low- and moderate-income persons most adequately and propose to expend the greatest proportion of the funds requested on low- and moderate-income persons. In addition, § 570.420(k) now contains the general mandate that each proposed program must principally benefit low- and moderate-income persons.

§ 570.426 APPLICATIONS FOR COMPREHENSIVE GRANTS

Most comments on this Section, formerly § 570.428, related to the Citizen Participation requirements of the entitlement program which were incorporated by reference for the Small Cities Comprehensive Program. These Citizen Participation requirements are being revised in the final entitlement regulations to permit more flexibility for communities. We believe it is appropriate to apply the same Citizen Participation requirements to Comprehensive applicants as to entitlement applicants, given the intended similarity in the nature and scope of the two programs. The regulations do permit the cost of citizen participation to be included as an eligible administrative cost for reimbursement if the full application is approved.

Other commenters felt that it was also not appropriate to apply the entire set of application requirements of the entitlement program to the Small Cities Comprehensive Program, and that the time permitted between invitation of a full application and its submission would be inadequate in view of the application requirements. As stated previously, the two programs are similar in nature and, accordingly, the same application requirements should apply. Additionally, since many of the Comprehensive Grant recipients will be hold-harmless communities, the use of the same application requirements will permit these applicants to use the same forms for both funding mechanisms. With regard to the time constraints, applicants for Comprehensive Grants will have the period prior to the preapplication, in addition to the period between the submission of the preapplication and the full application, to fully develop the information required with the full application. We will, if possible, provide additional time for Comprehensive Grant applicants in future fiscal years.

§ 570.427 SINGLE PURPOSE GRANT PROGRAM GENERAL REQUIREMENTS

This section was previously designated § 570.429. The proposed regulations provided in § 570.429(b) that a community had to "substantially complete" any project for which it had received funding, which was further defined as "75 percent of the funds obligated and 50 percent of the funds expended," before it could apply for a Single Purpose Grant. Communities pointed out that no such standard was being applied to Comprehensive grantees and that in many cases the failure to achieve such results was beyond the control of the applicants. The revised regulations removes this performance standard. In lieu of this requirement, the same performance standards as described in Section 570.423(c) will be applied to all previous recipients of discretionary grants in determining whether or not performance has been adequate to consider them for another grant.

Considerable confusion resulted over the apparent contradictions in defining a Single Purpose Program. The preamble indicated that a Single Purpose Program could consist of a single activity or a number of activities. Section 570.429(a) defined it as a single activity or project, and Section 570.420(d)(2) described it as "essentially one activity." The definition in the final rule is now contained in § 570.427(a) and has been clarified to explain that a Single Purpose preapplication may consist of one or more projects, each involving one or more activities designed to address a specific community development need.

This clarified definition of Single Purpose Grants should permit communities to undertake a wide-range of activities, such as street repairs, and sidewalk construction, which support or are incidental to a primary activity.

Applications for Single Purpose Grants which propose substantial activities to address more than one major need, for example housing rehabilitation and a major public improvements program, are describing two projects, each of which will be rated separately.

§ 570.428 SELECTION SYSTEM FOR SINGLE PURPOSE GRANTS

The rating mechanism for the Single Purpose Program was contained in § 570.430 of the proposed rules. Several suggestions were made that 1970 Census data should not be relied on to rate communities under the needs factors in § 570.430 (a) through (d) because the data is no longer relevant and does not represent changes that have taken place since the data was assembled. Unfortunately, the Census data, as updated, are the only uniform data available in all communities that may be competing for discretionary grants. While certain communities or planning areas may have more recent information, the use of this information would not be fair to those communities that do not have such data.

Paragraphs (a) through (d), Needs factors; (f) Benefit to low- and moderate-income persons; (g) Performance in housing and equal opportunity efforts; and (i) Final ranking; and the actual method for assigning scores for each factor have been stated in the final rule as proposed in Section 570.428 for the reasons expressed previously.

Various concerns were raised concerning the program factor, § 570.430(e). Some commenters felt the distinction between relationship and impact was too hard to define. Others felt the program areas that would be addressed were too limiting and did not let a community design a program in such a manner that they could take advantage of all the eligible activities permitted under the legislation. After considering the comments, we agree that the difference between relationship and impact may be too fine and we have eliminated the consideration of relationship. In view of the revised definition of Single Purpose, which will permit more than one activity, we have expanded the types of activities that can be undertaken. Concern was also expressed that the decisions that were to be made were too subjective. To assist applicants in describing a program in such a manner that it can be considered equitably with others, subsection (e) now defines what will be considered in making the assessment determinations.

Several commenters asked for definitions of terms contained in § 570.430(i), Other Factors, now subsection (h) of § 570.428. HUD field offices will provide the definition of those terms as they will be applied within their jurisdictions. Several comments were also received suggesting that State programs be included in § 570.430(i)(4). State program recognition is provided for within (h)(1)(B).

§ 570.429 PREAPPLICATIONS FOR SINGLE PURPOSE GRANTS

Paragraph (a)(2)(iv) reflects changes in the proposed submission requirements of § 570.431 to conform to the new calculation of benefit to low- and moderate-income persons in § 570.428(f).

Several commenters pointed out that the proposed regulations did not require a Citizen Participation certification with the preapplication. This was an oversight and the requirement has been added at (a)(2)(vi). The requirement for a Grantee Performance Report or status report has also been included at (a)(4).

Commenters suggested that too much information was required to be submitted with the preapplication, and that the data requirements were too extensive. Changes made in the selection criteria listed in § 570.428 will reduce the amount of information required, although we do recognize the preapplication still requires substantial information. However, since we want to select the best designed projects that benefit low- and moderate-income persons to the greatest extent, sufficient information is required to permit us to make reasonable judgments and decisions that promote these objectives.

§ 570.430 APPLICATIONS FOR SINGLE PURPOSE GRANTS

Proposed § 570.432 has been substantially revised in subsection (a) to more directly reflect the statutory requirements. As the legislation requires, applicants which have a population of 25,000 or more or which are located in an urbanized area of a Standard Metropolitan Statistical Area, must submit a summary of a three-year community development plan which identifies its community development and housing needs, describes a comprehensive strategy for meeting those needs, and specifies both short- and long-term objectives to be met by the strategy. As the law permits, we are exempting all other applicants from this requirement.

Subsection (b) now also better reflects the statutory language. Several comments expressed the opinion that the HAP requirements were too complex for small communities to deal with effectively. In response to these comments and other recommendations for specific changes, we have attempted in subsection (c) to simplify the HAP requirements without compromising statutory intent.

A few comments recommended that we make clear that applicants located within a county which has an approved HAP, or incorporated areas that wish to apply for funding which are in a county preparing a HAP, are not required to submit a separate HAP. We have clarified this situation by permitting such applicants to submit the county's plan "in lieu of preparing a separate Housing Assistance Plan." This arrangement requires an agreement between the county and the applicant. We have changed the language pertaining to this agreement to state that the agreement must identify the applicant's fair share of the housing assistance goals and obligate the applicant to assume responsibility for its fair share.

There were several comments suggesting that the term "households" be substituted for "persons" and "families" in the discussion of Housing Assistance Plan requirements. We have made this change where appropriate.

In response to other comments, paragraph (c)(1)(i) makes it clear that the applicant is required only to describe the condition of the housing stock in the community. We have also added that the required estimate of vacancy rates shall take into account only "non-seasonal, available" units.

As requested by comments, definitions of the terms "tenure" and "household type" have been added in subsection (c) where appropriate. The definition of household type has been revised to include elderly, handicapped, family and non-elderly individuals, and large family.

The specific reference to assessment of the housing assistance needs of handicapped, female heads of households and each minority group currently residing in or expected to reside in the community, has been replaced by the general requirement to include information on any identifiable segment of the total group of low-income households in the community, as some commenters requested.

Several comments suggested that the "expected to reside" requirement be eliminated entirely, or at least waived for communities with a population under 2,500. This information, however, is legislatively required from all applicants. Other comments suggested that applicants be permitted to use non-statistical means to estimate the number of those expected to reside in instances where reliable statistical data are not available. Section 570.306 of the block grant regulations requires that applicants in metropolitan areas use the established "expected to reside" formula, but non-metropolitan applicants may use other means to estimate the number of those expected to reside.

We received a few comments which suggested that units proposed for rehabilitation in the HAP goals should be required to meet standards other than local housing codes. This provision has been changed in paragraph (c)(2) to require that units proposed for rehabilitation must meet, at a minimum, the Section 8 Existing Housing Quality Standards upon completion. We have retained the provision that weatherization and other similar activities will not satisfy rehabilitation housing assistance goals.

Several comments requested that applicants be permitted to submit required information by enumeration district as well as census tract. Subsection (d) now allows applicants to submit maps which identify required information by census tract, enumeration districts, or geographic quadrant of the community where data from census tracts or enumeration districts either are unavailable or include a substantial area.

§ 570.431 CITIZEN PARTICIPATION

Of the numerous comments received on the citizen participation (§ 570.433), the majority were concerned with the complexity and detailed structure of the requirements. Many comments stated that the citizen participation requirements were plainly "big city oriented" and did not acknowledge the character of small cities which lack the resources necessary to comply with such extensive requirements. In response to these comments, the citizen participation requirements for the Single Purpose Program have been extensively revised and simplified. Simplification of this Section is not to be construed as minimizing the importance of citizen participation, but is only intended to provide small communities with the flexibility necessary to achieve meaningful citizen participation. We have also restructured what is the new Section 570.431 to make clear not only the applicant's responsibilities, but also the sequence of actions which must be taken at each stage in the preapplication/application process.

§ 570.432 SINGLE PURPOSE GRANTS FOR IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY

A few comments requested clarification of the term "unique and unusual circumstance" used in § 570.434(a)(1). This phrase is not further defined, however, because we believe that the phrase which follows it "* * * not for the type of threat that occurs with frequency in a number of communities within the state * * *" adequately conveys the idea that needs which are eligible for Imminent Threat funding must constitute a circumstance uncommon for the State, as well as an imminent threat to public health and safety.

Several comments requested that the level of available funding for Imminent Threat grants be increased from 15 percent; a number of other comments suggested that the Imminent Threat set aside be decreased. We consider the reservation of up to 15 percent of funds allocated pursuant to Subpart B and assigned to the Area

Office for Small Cities Grants in metropolitan and nonmetropolitan areas as an adequate maximum level of funding for the imminent threat needs of most areas. Area Offices may decide to reserve less than that percentage if conditions within their jurisdiction so warrant.

Several comments recommended that we establish a clear set of priorities within the category of Imminent Threats to Public Health or Safety. However, we have decided to remain with our original position that the urgency and immediacy of the threat shall be verified, on a case by case basis, by an appropriate authority other than the applicant, prior to submission of a full application to the Area Office for concurrence. This provision is intended to give the Area Office a measure of discretion in the determination of imminent threats. If the Area Office concurs with the finding that an imminent threat to public health and safety exists, a Single Purpose Grant may be awarded to alleviate this condition, despite the possibility that other requests for imminent threat funding may be received after available funding has been depleted.

One comment suggested that the requirement that all funds to be committed no later than the end of the fiscal year in which they were assigned, (§ 570.434(b)(1)), was too restrictive. This provision has been removed from the regulations in view of the fact that Small Cities funding decisions will not be made until the last quarter of Fiscal Year 1978, and because we do not wish to restrict the availability of funds for Single Purpose Grants for imminent threats to public health or safety.

Several comments suggested that the language pertaining to the method of allocating funds set aside for urgent needs should be clarified to state that such funds shall be reserved out of funds available for Single Purpose Grants. This language has been included in paragraph (b)(1).

§ 570.433 HUD REVIEW AND ACTIONS ON FULL APPLICATIONS FOR SINGLE PURPOSE AND COMPREHENSIVE GRANTS

Numerous comments suggested that Section 570.435, which authorized an applicant to incur costs for the planning and preparation of an application for funds available under this subpart, including citizen participation, be expanded to include the costs of preapplication. We have considered this possibility for several years but again decline to adopt it. Potential reimbursement would encourage the employment of outside experts and could lead to a substantial increase in the costs of preparing competitive preapplications. Such a result would be unfair to those communities not selected. The wording of this section, which permits authorization to incur costs, has been clarified to convey the intended meaning that the authorization will be extended to all applicants invited to submit a full application.

§ 570.434 PROGRAM AMENDMENTS FOR SINGLE PURPOSE AND COMPREHENSIVE GRANTS

This Section was previously designated § 570.436. A suggestion was made that the language of proposed paragraph (a) be expanded to give consideration to any program amendments which would improve the effectiveness of local programs. For this reason, the provision which states that "HUD will consider amendments only if they are necessitated by actions beyond the control of the applicant" has been removed.

A new paragraph, designated (b), describes when prior HUD approval for amendments to a Housing Assistance Plan is required.

§ 570.435 MODIFIED OMB CIRCULAR NO. A-95 PROCEDURES FOR THE SMALL CITIES PROGRAM

This Section was previously designated § 570.437. Several comments recommended that both preapplication and application be submitted for A-95 clearinghouse review 45 days, instead of 30 days, prior to submission to HUD. This recommendation was not adopted for the preapplication because it would lengthen the time frame for the entire application process. As a further means to ensure that funding decisions will be made within the fiscal year, we have revised the A-95 review procedure of full applications, now contained in paragraph (c), to provide that applications may be submitted to the appropriate State and areawide A-95 clearinghouses prior to or concurrent with submission to HUD. The clearinghouses will then have 45 days from receipt of the application to review it and furnish any comments to HUD. We will not take any final action on the application until either the comments have been received or the time limit has expired. We have removed § 570.437(d), Consistency Requirement, which stated that the Department does not intend to fund any activities which were clearly inconsistent with areawide or State plans, because HUD has no means of determining the adequacy of the areawide or State plans in question. However, Area Offices are required by CPD Notice 76-23, dated November, 1976, to obtain approval of the Regional Administrator prior to approving a project which a clearinghouse recommends for disapproval or approval with substantial changes, if a successful resolution of the issues cannot be reached.

Numerous provisions of the Small Cities Program have been substantially changed in the final rule primarily as a result of comments received. The major revisions that have been made include elimination of the threshold requirements for access to the programs, revision of the method for allocating funds between the Single Purpose Program and the Comprehensive Program, and removal of the requirement that no more than 25 percent of the funds may be expended on activities which do not principally benefit low- and moderate-income persons. These changes will make the program more responsive to the needs of small cities and will permit maximum flexibility to communities in designing programs to meet their needs, and ensure timely use of the funds. The procedures contained in Subpart F are urgently needed so the Department can make funding decisions governing fiscal year 1978 appropriations within the same fiscal year and provide the funds on an annual basis consistent with the intent of the legislation. After weighing the desirability of providing further rulemaking in this proceeding against the urgent need for immediate adoption of this rule, the Assistant Secretary for Community Planning and Development has determined that publication of the rule for comment is impracticable, unnecessary, and contrary to the public interest and that good cause exists for making this rule effective March 1, 1978.

A finding of inapplicability with respect to environmental impact has been prepared in accordance with HUD Handbook 1390.1. In addition, the inflationary impact of this rule has been evaluated in accordance with Executive Order 11821. Copies are available for inspection and copying in the Office of the Rules Docket Clerk, Room 5216, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

Accordingly, 24 CFR is amended by adding a new Subpart F as follows:

The Table of Contents for Subpart F is revised as follows:

Subpart F—Small Cities Program

Sec.
570.420 General
570.421 Applications by States and Counties; Joint Applications
570.422 State Participation [Reserved]
570.423 Comprehensive Program General Requirements
570.424 Selection System for Comprehensive Grants
570.425 Preapplications for Comprehensive Grants
570.426 Applications for Comprehensive Grants
570.427 Single Purpose Program General Requirements
570.428 Selection System for Single Purpose Grants
570.429 Preapplications for Single Purpose Grants
570.430 Application for Single Purpose Grants

570.431 Citizen Participation Requirements for Single Purpose Grants
570.432 Single Purpose Grants for Imminent Threat to Public Health or Safety
570.433 HUD Review and Actions on Full Applications for Single Purpose and Comprehensive Grants
570.434 Program Amendments for Single Purpose Comprehensive Grants
570.435 Modified OMB Circular No. A-95 Procedures for the Small Cities Program

AUTHORITY: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).)

Subpart F is revised to read as set forth below:

Subpart F—Small Cities Program

§ 570.420 General.

(a) *Scope and Applicability.* This Subpart describes the policies and procedures that will be used to implement the Small Cities Program. Funds for this program are those provided through the metropolitan and nonmetropolitan balances describes in § 570.104(c) in Subpart B of this part. Except as modified in this Subpart, the policies and procedures set forth in Subparts A, B, C, J, K, and O of this part, as well as those Sections of Subpart D of this part which are specifically cited in this Subpart shall apply to the Small Cities Program. The HUD Environmental Review Procedures contained in 24 CFR Part 58 also apply to this Subpart.

(b) *Program Objectives.* The Small Cities Program will provide grants to States and units of general local government in both metropolitan and nonmetropolitan areas to undertake the same community development activities as may be funded in the entitlement grant program. The Small Cities Program, however, is competitive in nature and the demand for funds far exceeds the amount available. Therefore, eligible applicants selected for funding will be those communities having the greatest need as evidenced by poverty and substandard housing and whose applications must adequately address locally-determined needs of low- and moderate-income persons, consistent with one or more of the following purposes.

(1) Support realistic and attainable strategies for expanding low and moderate income housing opportunities;

(2) Promote deconcentration of lower-income housing;

(3) Promote more rational land use;

(4) Provide increased economic opportunities for low- and moderate-income persons;

(5) Correct deficiencies in public facilities which affect the public health or safety, especially of low- and moderate-income persons.

(c) *Eligible applicants.* Eligible applicants are States and units of general local government, excluding metropolitan cities, urban counties, units of government which are participating in urban counties or metropolitan cities, and Indian tribes eligible for assistance under Section 107(a)(7) of the Act. For the purpose of this Subpart, a unit of general local government includes those entities described in § 570.403(b)(i) (2) and (3). Applications may be submitted individually, jointly, or by counties and States on behalf of other units of government.

(d) *Types of grants.* Recognizing that needs of communities vary widely, the Small Cities Program will consist of grants for two general type programs—Comprehensive and Single Purpose.

(e) *Distribution of funds between comprehensive grants and the single purpose grants.* Within both the metropolitan and nonmetropolitan balances for each Area Office's jurisdiction, 25 to 35 percent of the funds will be reserved for the Single Purpose Program, with the remainder reserved for the Comprehensive Program. Exceptions to these percentages may be made where there is insufficient demand for Comprehensive Grants to justify a 65 percent reservation or where the demand for Comprehensive Grants would justify a reservation of more than 75 percent.

(f) *Size of Grants.*—(1) *Ceilings.* Within the metropolitan and nonmetropolitan areas of each Area Office's jurisdiction, HUD may establish general ceilings per applicant for both Single Purpose and Comprehensive Grants. Separate ceilings may be established for Comprehensive Grants with multiyear commitments, or joint applications, or for applications in behalf of other units of government.

(2) *Individual Grant Amounts.* Both Single Purpose and Comprehensive Grants for specific grantees will be provided in amounts commensurate with the size of the applicant and the applicant's program. In determining appropriate grant amounts for each applicant, HUD may consider an applicant's population, need, proposed activities, ability to carry out the proposed program, previous funding levels, and availability of hold-harmless funds.

(g) *Restrictions on applying for grants.* Applicants may apply for either a Comprehensive Grant or a Single Purpose Grant, except for States or counties applying on behalf of other units of government as described in § 570.421(b), in which case the State or county may apply for both a Single Purpose and a Comprehensive Grant. A preapplication for a Comprehensive Grant which does not meet the definition of such a program will be considered for a Single Purpose Grant.

(h) *Method of selecting grantees.* (1) HUD will establish national selection and rating systems for both the Comprehensive and Single Purpose Programs which identify the criteria that will be used in selecting among applicants. Preapplications are required for both programs. These will be divided into metropolitan and nonmetropolitan pools for both programs and rated and ranked pursuant to §§ 570.424 and 570.428, respectively. Applicants must include sufficient information in the preapplication to permit HUD to rate the preapplication against the various selection criteria, and must advise HUD of the source of information and the method used to compile the information for the preapplication. Existing sources of information, such as areawide analyses, State plans or needs assessments, should be used whenever possible. Decisions made by HUD in selecting grantees will be documented and made available to the general public upon request.

(2) HUD will establish deadlines for submission of preapplications by publication of a Notice in the FEDERAL REGISTER.

(i) *Data.* Data used in this Subpart with respect to the needs factors (§ 570.424(a)-(d) and § 570.428(a)-(d)), in the selection criteria shall be based on information acquired by HUD from the United States Bureau of the Census for use in allocating funds pursuant to Subpart B of this Part for the same fiscal year appropriation. However, a HUD Regional Office may authorize the use of updated data developed by a State agency for the entire nonmetropolitan area or all metropolitan areas of the State in lieu of Federal census data if the following criteria are met:

(1) The data have been updated in such a manner that they can be applied to all potential applicants in the nonmetropolitan or metropolitan areas of a State;

(2) The data are generally available and can be verified by HUD;

(3) The data can be submitted in a usable form no later than 30 days prior to the deadline for submission of preapplications.

(j) *Previous audit findings.* A preapplication will not be accepted from any community that has an outstanding audit finding for any HUD program undertaken by the community or has an outstanding monetary obligation to HUD as a result of such a finding. Waivers to this prohibition may be provided by the Regional Administrator, but in no instance shall a waiver be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made.

(k) *Program Design.* The program as a whole must principally benefit low- and moderate-income persons. In addition, the selection process of the Small

Cities Program is heavily weighted toward those programs which have the greatest benefit to low- and moderate-income persons. All activities contained within such programs must either benefit low- and moderate-income families, or aid in the prevention or elimination of slums or blight, or meet other community development needs having a particular urgency.

§ 570.421 Applications by States and counties; Joint Applications.

(a) *General.* In addition to applications by cities in behalf of themselves, States and counties may apply for Single Purpose or Comprehensive Grants for use in specific locations within metropolitan or nonmetropolitan areas in behalf of themselves and in behalf of other units of general local government. For purposes of this section, the term "county" does not include urban counties.

(b) *Preapplications and applications in behalf of others.* Applications by States and counties submitted in behalf of other units of general local government shall be pursuant to a written agreement between the county or State and the participating units of general local government. Such agreements must be submitted with the preapplication.

(c) *Joint preapplications-and applications.* Units of general local government, including counties, may submit a joint preapplication or application which would address common problems faced by the jurisdictions. These preapplications and applications must be pursuant to written cooperation agreements, submitted with the preapplications, will be submitted by only the unit of government disignated as the lead unit for administrative purposes. The lead unit of government shall be considered the applicant.

(d) *Limits on applying for assistance.* Units of general local government included in an application submitted by a State or County in their behalf, or included in a joint application, may not otherwise apply for assistance under this Subpart.

(e) *Data considerations.* With respect to county and State applications in behalf of themselves, only data relating to those unincorporated and incorporated areas where community development activities are to take place shall be included for use in rating the needs factor of the selection criteria (§ 570.424(a)-(d) and § 570.428(a)-(d)). With respect to State and county applications in behalf of units of general local government, and for joint applications, only data relating to the unincorporated or incorporated places in which activities are to take place shall be considered in rating the needs factor of the selection criteria.

(f) *Housing Assistance Plans.* (1) If there is a HUD-approved Housing Assistance Plan for a unit of general local government in which the State or county intends to carry out activities, the State or county may satisfy its Housing Assistance Plan requirements by indicating its support of the existing plan.

(2) For joint applications and applications in behalf of units of general local government, the Housing Assistance Plan (HAP) shall relate to each unit of government in which activities are to be carried out. The plan shall be adopted by each unit of general local government included in the application and shall be consistent with any other HAP applicable to these jurisdictions.

(g) *Urban counties and metropolitan cities.* A state or a county may not apply for funds provided under this subpart for use in a metropolitan city or an urban county, including any unit of general local government that is participating in the metropolitan city or urban county.

§ 570.422 State participation. [Reserved]

§ 570.423 Comprehensive program general requirements.

(a) *Definition.* A comprehensive program must meet all of the following criteria:

(1) Address a substantial portion of the identifiable community development needs within a defined concentrated area;

(2) Involve two or more activities that bear a relationship to each other, excluding administration, planning, and management, and which either in terms of support or necessity are carried out in a coordinated manner;

(3) Have beneficial impact within a reasonable period of time;

(4) Be developed through assessment of the applicant's community development, housing, and economic needs;

Exceptions to the requirement that the activities be concentrated within a designated area may be made if the applicant can demonstrate to HUD's satisfaction that the proposal represents a reasonable means of addressing the needs identified.

(b) *Funding Commitments.* (1) HUD will make commitments of up to three years for the Comprehensive Program, subject to the availability of appropriations. In determining the number of years for which a commitment will be made, HUD will consider the nature of the program proposed, the previous performance of the applicant, including both community development and housing; the capacity of the applicant to carry out the program proposed; the scheduling of the program; and the year-by-year fund requirements. Special consideration for funding commitments beyond one year will be given to those applicants currently carrying out a Comprehensive Program and subject to the phase-out provisions of Section 106(h) of the Housing and Community Development Act of 1974, as amended. Grant requests must either by themselves, or in combination with other stated funding sources, be sufficient to complete the program described.

(2) Once a community has been selected for a multiyear commitment and funds are available, it will not have to compete in the selection process for funding during subsequent years. Funds will be provided in subsequent fiscal years after the grantee has submitted the Annual Community Development Program, and HUD has determined that the annual program either is consistent with that described in the original application or has been properly amended pursuant to § 570.434, and the community's performance is adequate. Performance determinations will be made based on the criteria described in § 570.423(c).

(c) *Capacity and performance considerations.* No grant will be made to an applicant that does not have the capacity to undertake the proposed program. In addition, applicants which have participated in the Block Grant Program previously must have performed adequately. In determining whether an applicant has performed adequately, HUD will examine the applicant's performance in the following areas:

(1) *Community development activities.* (i) The rate of progress achieved in moving activities into execution;

(ii) The rate of expenditure or obligation of community development funds.

(2) *Housing assistance.* (i) The actual progress achieved in meeting goals established under an approved Housing Assistance Plan;

(ii) Absent achievement of such goals, the actions taken by the community to facilitate the provision of housing assistance for low- and moderate-income persons, such as:

(A) Removal of impediments such as restrictive zoning or building codes;

(B) Changes in land use to facilitate construction;

(C) Provision of sites and/or necessary infra-structure;

(D) Organization of a housing authority or other similar entity;

(E) Development of a Section 701 land use or housing element.

(3) *Compliance with applicable laws and regulations.* (i) The compliance of the community with the laws, regulations, and Executive Orders applicable to the Community Development Block Grant program;

(ii) Resolution of findings made as a result of HUD monitoring;

(iii) Resolution of audit findings.

§ 570.424 Selection system for Comprehensive Grants.

Preapplications will be rated and scored against each of the following

nine factors. All points for each factor will be rounded to the nearest whole number. The maximum score possible is 1025 points.

	Points
(a) Need—Absolute number of poverty persons	100
(b) Need—Percent of poverty persons	50
(c) Need—Absolute number of substandard housing units	30
(d) Need—Percent of substandard housing units	20
(e) Program factor—Impact of the proposed program	400
(f) Benefit to low- and moderate-income persons	200
(g) Performance:	
Housing	100
Local equal opportunity efforts	50
(h) Housing opportunity plan (HOP):	
Applicant participating	50
(i) Hold-harmless phaseout communities	25

Preapplications from counties in behalf of themselves, States in behalf of themselves or in behalf of counties, or joint preapplications in which a county is participating, will be scored separately with respect to the needs factors of § 570.424 (a)–(d).

(a) *Need—absolute number of poverty persons (100 points).* All applicants will be ranked in terms of the number of persons whose incomes are below the poverty level according to the latest data from the Bureau of the Census. Individual scores will be obtained by dividing each applicant's absolute number of persons in poverty by the greatest number of persons in poverty of any applicant and multiplying by 100.

(b) *Need—percent of poverty persons (50 points).* All applicants will be ranked in terms of the percentage of their population below the poverty level according to the latest data from the Bureau of the Census. Individual scores will be obtained by dividing each applicant's percentage of persons in poverty by the highest percentage of persons in poverty of any applicant and multiplying by 50.

(c) *Need—absolute housing need (30 points).* All applicants will be ranked in terms of their absolute housing needs, as identified in the latest data available from the Bureau of the Census. Need will be measured by the number of units which lack plumbing or are overcrowded. Individual scores will be obtained by dividing each applicant's absolute housing need by the highest number of such units of any applicant and multiplying the results of 30.

(d) *Need—percent of housing need (20 points).* All applicants will be ranked in terms of their percent of housing need, as identified in the latest data available from the Bureau of the Census. Need will be measured by the percent of units which lack plumbing or are overcrowded. Individual scores will be obtained by dividing each applicant's percentage of housing need by the highest percentage of such housing needs of any applicant and multiplying the results by 20.

(e) *Program factor—impact of the proposed program (400 points).* Each applicant shall select four program design criteria from among the following eleven. HUD will measure the impact of the program on each of the program design criteria selected, based on the results to be achieved when considering the amounts of funds sought, the persons to be benefitted, the degree and nature of the benefit, additional actions that may be necessary to fully resolve the need, previous actions the applicant may have taken to address that need, environmental considerations, and where appropriate, site selection standards.

(1) *Program design criteria.* (i) Supports comprehensive neighborhood stabilization and/or revitalization in low and moderate income areas, or conserves the housing supply for low- and moderate-income persons;

(ii) Provides housing opportunities for low- and moderate-income families and minorities on a regional basis; or implements a HUD-approved Housing Opportunity Plan;

(iii) Provides opportunities for spatial deconcentration within the locality of low- and moderate-income families and minorities;

(iv) Supports the expansion of housing for low- and moderate-income persons;

(v) Addresses a serious deficiency in a community's public facilities for the principal benefit of low- and moderate-income persons;

(vi) Provides for expanded economic opportunities for persons of low- and moderate-income in the form of permanent employment;

(vii) Benefits low- and moderate-income persons by removing slums or blighted conditions;

(viii) Implements a State growth or resource coordination plan;

(ix) Enhances a community's position as a regional center, economic development center, or growth center;

(x) Resolves a serious threat to the health or safety of low- and moderate-income persons;

(xi) Deals with the impact caused by other Federal actions or policies particularly on low- and moderate-income persons, and/or supports other Federal programs being undertaken in the community.

(2) *Rating and ranking methods.* This factor requires a two-step rating process. First, the potential of the proposed program of activities to achieve the results intended by each selected criterion when considered in relation to other communities addressing the same criterion will be assessed and a numerical value assigned, based on the following:

The results would have no impact	0
The results would have minimal impact	2
The results would have a moderate impact	4
The results would have a significant impact	8

After each of the four criteria selected by an applicant has been rated and values assigned, the total is added (Program Impact Score Maximum is 32). Then, the actual points are determined by dividing each applicant's Program Impact Score by the highest Program Impact Score achieved by any applicant and multiplying the result by four hundred.

(f) *Benefit to low- and moderate-income persons (200 points).* All applicants will be ranked in terms of the percent of funds which will benefit low- and moderate-income persons. Individual scores will be obtained by dividing each applicant's percentage by the highest percentage achieved by any applicant and multiplying the results by 200. Costs of planning, management and administration will not be included in this computation. The appropriate median income amounts for low and moderate income will be supplied by HUD.

(g) *Performance in housing and equal opportunity (150 points total).* (1) *Housing efforts.* Twenty points for each of the following criterion will be awarded to each applicant that can demonstrate outstanding performance in: (i) providing housing for low- and moderate-income families located in a manner which provides housing choices for areas outside of minority and low-income concentrations; (ii) dispersal, by race, in occupancy of its existing assisted housing;

(iii) Meeting its large family housing assistance needs in relation to that proportion of need;

(iv) Carrying out housing assistance goals from previous HAP(s).

(v) Enforcement of a Fair Housing Ordinance.

(2) *Local equal employment and entrepreneurial efforts (50 points).* (i) Twenty-five points will be awarded to any applicant that demonstrates that the percentage of its contracts based on dollar value, awarded within the past two years to minority owned, controlled, or managed businesses, is greater than the percentage of minorities residing within the county for nonmetropolitan applicants, or within the SMSA for metropolitan applicants.

(ii) Twenty-five points will be awarded to any applicant that demonstrates that its percentage of minority employees is greater than the percentage of minorities within the county for nonmetropolitan applicants, or within the SMSA for metropolitan applicants.

(h) *Housing Opportunity Plan (50 points).* Fifty points will be awarded to any jurisdiction participating in a HUD-approved areawide Housing Opportunity Plan.

(i) *Hold-Harmless Provisions (25 points).* Twenty-five points will be awarded to a community which is cur-

rently carrying out a comprehensive community development program and which is subject to the phase-out provisions of Section 106(h) of the Housing and Community Development Act of 1974, as amended.

(j) *Final ranking.* The points received by each applicant on the nine rating factors will be totaled and the preapplications ranked according to the final point totals. Invitations for full applications will be made based on this final ranking to the extent funds are available. HUD may invite additional applications on a stand-by basis in the event one of the applications from the higher ranked applicants is not approved, or additional funds become available.

§ 570.425 Preapplications for Comprehensive Grants.

(a) *Submission requirements.* Preapplications shall be submitted on HUD forms to the appropriate Area Office and shall consist of the following:

(1) Standard Form 424, as prescribed by OMB Circular A-102;

(2) A program narrative statement which consists of the following:

(i) A brief description of the applicant's community development problems/needs to be served by the proposed program; and identification of the criteria for selection to be addressed by the program;

(ii) A description of the program to be carried out with assistance under this Subpart and an estimate of the cost of the proposed activities;

(iii) Information that demonstrates the impact the proposed program will have on the design criteria being addressed;

(iv) An analysis of the amount of funds that will be used to benefit low- and moderate-income persons. The analysis shall indicate the total number of persons to be served, the number of persons that meet the definition of low and moderate income, how such low- and moderate-income persons are served, and the nature of the benefit;

(v) A brief statement describing the overall housing strategy that will be employed to meet the community's housing needs; and

(vi) Other information appropriate to respond to the other criteria for selection set forth in § 570.424.

(3) A certificate assuring compliance with all the citizen participation requirements of § 570.431(c) and (d)(1).

(4) A map of the applicant's jurisdiction which clearly identifies:

(i) Census tracts and/or enumeration districts;

(ii) Location of the proposed activities;

(iii) Concentrations of minority groups;

(iv) Concentrations of low- and moderate-income persons, and

(v) General locations for proposed new or rehabilitated housing assistance.

(5) If the applicant has received prior assistance under this part, a status report regarding performance with prior grants pursuant to § 570.423(c), or the Grantee Performance Report in lieu of the status report.

(b) *Submission of additional data.* Only data submitted by the deadline for submission of preapplications will be considered in the selection process, unless specifically requested by HUD in writing. All other data received after the deadline will be returned to the applicant.

§ 570.426 Applications for Comprehensive Grants.

(a) *Application requirements.* The application requirements contained in Sections 570.303, 570.304, 570.305, 570.306 (excluding paragraph (a)(4)(1)), and 570.307 of Subpart D of this Part, shall apply to applicants for Comprehensive Grants.

(b) *Coordination with applications for CDBG Entitlement Grants.* Where possible, HUD will use information submitted with a hold-harmless entitlement application, such as a Housing Assistance Plan which was prepared for a grant in the same fiscal year in which the Small Cities grant is being sought. Communities that anticipate applying for a Small Cities Comprehensive grant in addition to their hold-harmless entitlement, are encouraged to develop an overall strategy and comprehensive program that anticipates some additional funding, but which would lend itself to be segmented if the Small Cities request is not funded. Additional steps which could be taken to save time and effort would be to:

(1) Include the possibility of additional funding in the planning phase in such a manner that citizen participation requirements would have been met if and when a preapplication for a Small Cities Comprehensive grant is submitted;

(2) Submit such proposals through the A-95 clearinghouse process with the annual hold-harmless entitlement application to eliminate the necessity of resubmitting such information if and when an application for a Small Cities Comprehensive Grant is submitted.

(c) *Title VI compliance.* All applicants, except those currently receiving a hold-harmless grant, will be required to submit, on a form prescribed by HUD, evidence of compliance with title VI of the Civil Rights Act of 1964. The purpose of the evidence is to enable HUD to determine whether the benefits to be provided will be on a non-discriminatory basis and will achieve the purposes of the program for all persons, regardless of race, color, or national origin.

§ 570.427 Single purpose program general requirements.

(a) *General.* The Single Purpose Program will provide funds for one or more projects consisting of an activity or a set of activities designed to meet a specific community development need. Funds will be made available to address serious problems with housing needs or economic conditions which principally affect persons of low- and moderate-income or public facilities which affect the public health and safety.

(b) *Projects.* Applicants may seek funds within a single preapplication for more than one project, as long as the total grant request is within any grant ceilings and individual grant amounts that have been established. Each project will be rated separately. Grants requested, either by themselves or in combination with other stated funding sources, must be sufficient to complete the program.

(c) *Performance Requirements.* Communities which are currently carrying out or have carried out a metropolitan or nonmetropolitan discretionary grant program must satisfy the performance criteria described in Section 570.423(c) before they may apply for another grant. Performance determinations will be made as of the date the preapplication is submitted to the Area Office.

§ 570.428 Selection system for Single Purpose Grants.

Preapplications will be rated and scored against each of the following eight factors. All points for each factor will be rounded to the nearest whole number. The maximum score possible is 875 points.

	Points
(a) Need—absolute number of poverty persons	100
(b) Need—percent of poverty persons	50
(c) Need—absolute number of substandard housing units	30
(d) Need—percent of substandard housing units	20
(e) Program factor:	
Impact of the proposed program	200
(f) Benefit to low- and moderate-income persons	200
(g) Performance:	
Housing	100
Local equal opportunity efforts	50
(h) Other:	
Housing opportunity plan	50
Enhances position as a regional center	25
Implements State growth plan	25
Other Federal programs	25

Preapplications from counties in behalf of themselves, States in behalf of themselves or in behalf of counties, or joint preapplications in which a county is participating, will be scored separately with respect to the needs factors of § 570.428(a)-(d).

(a) *Need—absolute number of poverty persons (100 points).* All applicants

will be ranked in terms of the absolute number of poverty persons below the poverty level according to the latest data from the Bureau of the Census. Individual scores will be obtained by dividing each applicant's absolute number of poverty persons by the greatest number of poverty persons of any applicant and multiplying the result by 100.

(b) *Need—percent of poverty persons (50 points).* All applicants will be ranked in terms of the percentage of their population below the poverty level according to the latest data from the Bureau of the Census. Individual scores will be obtained by dividing each applicant's percentage of poverty persons by the highest percentage of poverty persons of any applicant and multiplying the results by 50.

(c) *Need—absolute housing need (30 points).* All applicants will be ranked in terms of their absolute housing need, as identified in the latest data available from the Bureau of the Census. Need will be measured by the number of units which lack plumbing or are overcrowded. Individual scores will be obtained by dividing each applicant's absolute number of housing units which lack plumbing or are overcrowded by the highest amount of such housing units of any applicant and multiplying the results by 30.

(d) *Need—percent of housing need (20 points).* All applicants will be ranked in terms of their percent of housing need, as identified in the latest data available from the Bureau of the Census. Within nonmetropolitan areas, need will be measured by the percent of units which lack plumbing or are overcrowded. Individual scores will be obtained by dividing each applicant's percentage of housing need by the highest percentage of housing need of any applicant and multiplying the results by 20.

(e) *Program factor—impact of the proposed program (200 points).* All applicants will be rated based on the impact of the proposed project will have on the need identified. The intent of this factor is to select among the projects which are proposed to address a similar problem area, those projects which will have the most significant impact. In assessing impact, consideration will be given to the amount of funds requested by the applicant, the results to be achieved, the extent and nature of benefit to low- and moderate-income persons, any additional actions that may be required, previous actions taken by the applicant, environmental concerns, site selection standards where appropriate, and the nature of the activity.

(1) *Problem areas.* The problem areas cited in the preapplication for which funds are being requested must be in one of the following three categories:

(i) Housing.

(ii) Deficiencies in public facilities which affect the public health and safety.

(iii) Economic conditions.

The applicant must explain how the project being proposed impacts on the problem area selected, and the needs of low- and moderate-income persons. Specific measurable terms should be used in this explanation.

(2) *Rating method.* All projects addressing the same problem area will be compared in terms of impact on the identified problem area, as follows:

The project would have no impact	0
The project would have minimal impact	50
The project would have moderate impact	100
The project would have substantial impact	200

(f) *Benefit to low- and moderate-income persons (200 points).* This factor will measure the benefit to low- and moderate-income persons. All applicants will be ranked in terms of the percent of funds benefitting low- and moderate-income persons. Individual scores will be obtained by dividing each applicant's percentage by the highest percentage achieved by any applicant and multiplying the results by 200.

(g) *Performance in housing and equal opportunity (150 points).*—(1) *Housing efforts (100 points).* Twenty points for each of the following criterion will be awarded to each applicant that demonstrates outstanding performance in:

(i) Providing housing for low- and moderate-income families located in a manner which provides housing choices outside of areas of minority and low-income concentrations;

(ii) Dispersal, by race, in occupancy of its existing assisted housing;

(iii) Meeting its large family housing assistance needs in relation to that proportion of need;

(iv) Carrying out housing assistance goals from previous HAP(s);

(v) Enforcement of a Fair Housing Ordinance.

(2) *Local equal employment and entrepreneurial efforts (50 points).* (i) Twenty-five points will be awarded to any applicant that can demonstrate that the percentage of its contracts, based on dollar value, awarded within the past two years to minority owned, controlled, or managed businesses, is greater than the percentage of minorities residing within the county for nonmetropolitan applicants, or within the SMSA for metropolitan applicants.

(ii) Twenty-five points will be awarded to any applicant that can demonstrate that its percentage of minority employees is greater than the percentage of minorities within the county for nonmetropolitan applicants, or within the SMSA for metropolitan applicants.

(h) *Other (125 points).* (1) Twenty-five points will be awarded for each of the following criteria effectively addressed by a proposed program which:

(A) Enhances the community's position as a regional center, economic development center, or growth center;

(B) Is consistent with and implements a State growth or resource coordination plan;

(C) Deals with the impact of other Federal programs or policies on the community and/or supports another Federal program being undertaken in the community.

(2) Fifty points will be awarded if the applicant is a participating jurisdiction in a HUD-approved Housing Opportunity Plan (50 points). (i) *Final ranking.* The points received by each applicant on the eight rating factors will be totalled, and the preapplications ranked according to the final point totals. Invitations for full applications will be made based on this final ranking to the extent funds are available. HUD may invite additional applications on a standby basis in the event one of the applications from the higher-ranked applicant is not approved or additional funds become available.

§ 570.429 Preapplications for Single Purpose Grants.

(a) *Submission requirements.* Preapplications shall be submitted on HUD forms to the appropriate HUD Area Office and shall consist of the following:

(1) Standard Form 424, as prescribed by OMB Circular A-102.

(2) A program narrative statement which consists of the following:

(i) A brief description of the applicant's community development problems/needs to be served by the proposed activity(ies) and an identification of which of the three possible problem areas (housing, public facilities which affect the health or safety, or economic conditions) that the activity will address;

(ii) A description of the activity(ies) to be carried out with assistance under this Subpart and an estimate of the cost;

(iii) A statement describing the impact the activity will have on the identified problem;

(iv) A statement on the percent of funds requested that will benefit low- and moderate-income persons. The statement should indicate the total number of persons to be served and the number of such persons that meet the definition of low and moderate income.

(v) Other information appropriate to respond to the criteria for selection set forth in § 570.428, particularly information on the Performance and Other Factors.

(vi) A certificate assuring compliance with the appropriate citizen participation requirements of § 570.431.

(3) *Maps.* A map of the applicant's jurisdiction which identifies by census tract or enumeration district:

(i) the location of the proposed activities;

(ii) the concentrations of minorities; and

(iii) the concentrations of low- and moderate-income persons.

(4) If an applicant has received prior assistance under this part, either a status report addressing the performance criteria or *submission of additional data.*

(b) The Grantee Performance Report in lieu of the status report must be submitted. Only that data received by the deadline established for preapplications will be considered in the selection process unless additional data are specifically requested, in writing, by HUD. Unrequested material received after the deadline will be returned to the applicant.

§ 570.430 Applications for Single Purpose Grants.

(a) *Needs assessment and strategy.* An applicant with a population of 25,000 or more, or which is located in an urbanized area of a Standard Metropolitan Statistical Area, must submit a summary of a three year community development plan which identifies its community development and housing needs, describes a comprehensive strategy for meeting those needs, and specifies both short- and long-term objectives to be met by the strategy. Such strategies should be developed in accordance with areawide development planning and national growth policies, and should (1) describe a program that will eliminate or prevent slums, blight or deterioration where such conditions exist; (2) provide improved community facilities and public improvements, including the provision of supporting health, social, and similar services where necessary and appropriate and in a manner to ensure full participation by and benefit or improve conditions for low- and moderate-income persons residing in or expected to reside in the community; and (3) foster neighborhood development in order to induce higher income persons to remain in or return to the community.

(b) *Community Development Program.* All applicants, regardless of population, must, after consideration of appropriate environmental factors, describe the project that will be undertaken which includes;

(1) The activity or activities to be undertaken to meet the community development needs and objectives;

(2) The estimated cost of each activity; and

(3) Identification of other resources that will be used to address the needs and objectives.

(c) *Housing assistance plan.* All applicants, regardless of population, are required to submit a Housing Assistance Plan. Applicants located within a county which is receiving a community development block grant may submit that county's Housing Assistance Plan in lieu of preparing a separate Plan, if it elects to assume its fair share of the housing assistance established as a goal by the county and it can demonstrate in the application that the county's survey of housing conditions and assessment of housing assistance needs have incorporated information for the applicant. An agreement between the county and the applicant must be executed which identifies the applicant's fair share of the housing assistance goals and obligates the applicant to assume responsibility for its fair share.

(1) *Housing needs and goals.* (i) The applicant shall describe the condition of the housing stock in the community by tenure (renter or owner). Estimates shall be made of the vacancy rates for non-seasonal, available units in standard condition, using the best estimate at the time the application is prepared, but in no case including units to be vacant at a future date.

(ii) The applicant shall assess the housing assistance needs of lower-income households currently residing in the community by tenure and by household type, (elderly and handicapped, family and non-elderly individuals, and large family), including any identifiable segment of the total group of lower income households in the community. Housing assistance needs of lower-income households expected to reside shall be assessed in accordance with § 570.306(b)(2)(ii).

(iii) The applicant shall propose a realistic goal to address the identified needs of lower-income households. The goal should specify the number of dwelling units or persons to be assisted by housing type (new, rehabilitated and existing units), by tenure, and by household type. The goal should address relative proportions of need insofar as practicable while providing for the development of feasible projects. The applicant shall describe the actions it plans to take to further fair housing for minorities and women pursuant to its assurance under § 570.307(k)(2).

(2) *HUD review of HAP.* Where substantial housing needs are identified pursuant to paragraph (c)(1) of this section, HUD may determine that a Housing Assistance Plan with only minimal goals is plainly inappropriate to meeting the applicant's needs. Housing types (new, rehabilitated or existing dwelling units) proposed to meet housing assistance needs should be established in relation to a community's housing market and should be realistic in terms of estimating the number and types of units which can be absorbed by the market within a reasonable period of time and provide for a balanced housing market. Any units proposed to be included in the HAP as goals for rehabilitation must meet, at a minimum, the Section 8 Existing Housing Quality Standards pursuant to 24 CFR 882.109, upon completion. Weatherization and other similar activities will not satisfy rehabilitation housing assistance goals.

(d) *Map requirements.* Maps must be submitted which include the following information identified by census tract (or enumeration district, or geographic quadrant of the community where tracts or enumeration districts are either not available or include a substantial area, such as an entire community:

(1) Concentrations of low- and moderate-income persons;

(2) Concentrations of minority residents;

(3) Locations of community development activities to be undertaken;

(4) Service areas of the proposed activities, if applicable;

(5) The median income of the census tracts in which the proposed activities are to be undertaken;

(6) Concentrations of substandard housing; and

(7) General locations for proposed new or rehabilitated housing assistance.

(e) *Cost analysis.* The total cost of each activity must be identified as well as the amount of Single Purpose grant that will be used for each activity. If the proposed activity is dependent on other funds for completion, the source of funds and the status of the commitment must also be indicated.

(f) *Title VI compliance.* All applicants, except those currently receiving a hold-harmless grant, are required to submit, in a form to be provided by HUD, evidence of compliance with Title VI of the Civil Rights Act of 1964. The purpose of the evidence is to enable HUD to determine whether the benefits to be provided will be on a non-discriminatory basis and will achieve the purposes of the program for all persons, regardless of race, color, or national origin.

(g) *Certificates of assurance.* The certificates required by § 570.307 of Subpart D shall be submitted by all single purpose applicants.

§ 570.431 Citizen participation requirements for single purpose grants.

(a) *General.* Each applicant for a Single Purpose Grant shall provide citizens with an adequate opportunity to participate in the planning, implementation and assessment of the program. To achieve these goals, each applicant must prepare and follow a written citizen participation plan that meets the requirements set forth in

this section. Nothing in these requirements, however, shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of the Community Development Program.

(b) *Scope of citizen participation.* Citizen participation shall include involvement in:

(1) The determination of priorities, the development of the community development and housing strategy and the Housing Assistance Plan;

(2) Subsequent amendments to the Community Development Program and the Housing Assistance Plan; and

(3) The process of planning, implementing and assessing the Community Development Program and performance.

(c) *Citizen participation plan.* Each applicant for a Single Purpose Grant must prepare and follow a written citizen participation plan that describes the method by which the following criteria will be met:

(1) The views and proposals of citizens, particularly low- and moderate-income persons, members of minority groups, and residents of blighted areas and neighborhoods where activities are proposed or ongoing, shall be solicited and responded to in a timely manner.

(2) Adequate notices of public hearings shall be provided in a timely manner so as to make them accessible and understandable to all citizens, including non-English speaking persons. The plan shall specify the number of days prior to hearings that notices will be made available.

(3) Hearings to obtain citizen views and to respond to citizen proposals will be scheduled at times and locations which permit broad participation, particularly by low- and moderate-income persons and residents of blighted neighborhoods and project areas.

(4) Citizens shall be involved in the development of both the preapplication and application.

(5) Full public access to program information and affirmative efforts to get adequate information to citizens shall be provided, particularly for persons of low- and moderate-income and residents of blighted neighborhoods and project areas.

(6) Citizens shall be involved in amendments, budget revisions and changes to the Community Development Program and the Housing Assistance Plan.

(7) Citizens shall be involved in planning, implementing and assessing the Community Development Program and performance.

(8) Low- and moderate-income persons and minorities will be ensured substantial representation in an advisory committee, if one has been created.

(9) Bilingual opportunities will be provided at public hearings, when necessary.

The plan must be written and available prior to undertaking any of the above.

(d) *Requirements for citizen participation in each stage of the application process:*

(1) *Preapplication stage.* (i) Prior to the preparation of the preapplication, the applicant shall, in accordance with the written plan, make available the following information:

(A) The total amount of Single Purpose funds to be applied for by the applicant for community development;

(B) The range of activities that may be undertaken with these funds, the kind of activities previously funded in the community (if applicable) and the progress made with respect to these activities;

(C) The fact that more preapplications will be submitted to HUD than can be funded;

(D) The processes to be followed in soliciting and responding to the views and proposals of citizens in a timely manner; and

(E) A summary of other important program requirements.

(ii) Prior to the required public hearings, the applicant shall provide for adequate public notices of the hearings in accordance with paragraph (c)(2) of this section.

(iii) Prior to the actual preparation of the preapplication, hearings shall be held to obtain the views and proposals of citizens with regard to the determination of priorities and community development and housing needs.

(iv) A certificate of assurance shall be submitted with the preapplication assuring that all appropriate requirements have been met.

(2) *Application stage.* Prior to the submission of the full application, the applicant shall, in accordance with the written plan:

(i) Assure that citizen participation has taken place with regard to the determination of priorities and community development and housing needs;

(ii) Provide adequate notices of public hearings in accordance with paragraph (c)(2) of this section; and

(iii) Hold hearings on the proposed application before adoption of a resolution or similar action by the local governing body authorizing the filing of the application.

(3) *Post approval stage.* Following the approval of its application, the grantee shall, in accordance with the written plan:

(i) Assure citizen participation when considering subsequent amendments to the Community Development Program and the Housing Assistance Plan; and

(ii) Provide for citizen participation in the planning, implementation and assessment of the Community Development Program including the development of the Grantee Performance Report and the submission of views to the Area Office.

§ 570.432 Single Purpose Grants for imminent threat to public health or safety.

(a) *Criteria.* The following criteria for an imminent threat to public health or safety shall apply:

(1) Notwithstanding the provisions of § 570.428, the Area Manager may, at any time, invite a full application for funds available under this Subpart in response to a request for assistance to alleviate an imminent threat to public health or safety that requires immediate resolution by waiving the requirements for preapplications. The urgency and the immediacy of the threat shall be verified by HUD with an appropriate authority other than the applicant prior to submission of the full application, and the Area Manager will review the claim to determine if, in fact, an imminent threat to public health or safety does exist. For example, an applicant with documented cases of disease resulting from a contaminated drinking water supply would have an imminent threat to public health, while an applicant ordered to improve the quality of its drinking water supply over the next two years would not have an imminent threat within the definition of this paragraph. These funds are to be used to deal with those threats which represent a unique and unusual circumstance, not for the type of threat that occurs with frequency in a number of communities within a state.

(2) The applicant does not have sufficient local resources and other Federal or state resources are unavailable to alleviate the imminent threat.

(b) *HUD action.* (1) Each Area Office Manager is authorized to reserve up to 15 percent of the funds allocated pursuant to Subpart B and assigned to the Area Offices for Small Cities Grants in metropolitan and nonmetropolitan areas for use in funding full applications to alleviate imminent threats to the public health or safety. Funds reserved shall be considered a part of the percentage of funds available for Single Purpose Grants. The 15 percent limit may be applied separately to the metropolitan and nonmetropolitan balances. Full applications shall be submitted in accordance with § 570.430.

(2) The only funds to be reserved for imminent threats to the public health and safety are those set aside by the Area Manager. After these funds have been depleted, no further applications relating to imminent threat shall be considered during that fiscal year.

(c) *Waiver of A-95 requirements.* The requirements for A-95 review and comment pursuant to § 570.435(c) may be

waived in the case of an imminent threat. HUD shall notify the appropriate state and areawide A-95 clearinghouses that it is inviting a full application for an imminent threat from an applicant.

(d) *Letter to proceed.* The Secretary may issue the applicant a letter to proceed to incur costs to alleviate the imminent threat provided all environmental reviews are completed pursuant to 24 CFR Part 58.

§ 570.433 HUD review and actions on full applications for Single Purpose and Comprehensive Grants.

(a) *Full applications.* Only applications from communities that have been invited to submit a full application will be accepted for review, and then only if: (1) It has been received before the deadline that has been established; (2) the application requirements are complete; (3) the funds requested do not exceed the amount of the invitation by HUD, unless a higher amount is acceptable to HUD; (4) the activities are essentially the same as those for which a full application was invited; (5) and any comments received from the clearinghouses are attached to the application or a statement included that no comments were received, with a copy of the letter transmitting the application to the clearinghouse.

(b) *HUD action on full applications.*—(1) *Review and notification:* While HUD is not required to review discretionary applications within 75 days, it will try to do so. Applications will be reviewed to ensure that any other resources that may be required are, in fact, available; and that any conditions that were established at the time of invitation have been satisfied. Following the review, HUD will promptly notify the applicant of the actions taken with regard to its application.

(2) *Conditional approval.* The Secretary may make a conditional approval in which case the grant will be approved, but the use of funds will be restricted. Conditional approvals may be made pursuant to § 570.311(f) or to insure that (i) actual provision of other resources required to complete the proposed activities will be available within a reasonable period of time; (ii) the project can be completed within estimated costs; (iii) or until site and neighborhood standards approval has been obtained for proposed housing projects, if applicable.

(3) *Disapproval of a full application.* The Secretary may disapprove a full application for the reasons set forth in § 570.311(c). In addition, full applications may be disapproved for any of the following reasons:

(i) The conditions established at the time of invitation have not been fully met;

(ii) Other resources necessary for the completion of the proposed activity are no longer available or will not be available within a reasonable period of time;

(iii) The activities cannot be completed within the estimated costs or resources available to the applicant;

(iv) There is new evidence of a lack of capacity of a recipient to carry out the proposed activities;

(v) The applicant has received other funds for the activities and assistance under this Subpart is no longer required.

(4) *Letter to proceed.* HUD will issue a letter authorizing an applicant to incur costs for the planning and preparation of an application for funds available under this Subpart, including citizen participation and environmental studies. Reimbursement for such costs will be dependent upon HUD approval of the application. Only those costs associated with the actual cost of preparation of the application may be assisted. In no instances may a planning or preparation fee be reimbursed when it is based upon a percentage of the assistance received under this subpart and such fees shall comply with the requirements set forth in § 570.200. Costs incurred by an applicant prior to notification of a funding approval or issuance of a letter to proceed by HUD are not eligible for assistance under this part.

§ 570.434 Program amendments for Single Purpose and Comprehensive Grants.

(a) HUD will consider amendments if they are necessitated by actions beyond the control of the applicant. Recipients shall request prior HUD approval for all program amendments involving new activities or significant alteration of existing activities that will change the scope, location, objectives or scale of the approved activities or beneficiaries. Approval will be subject to the following:

(1) New or significantly altered activities will be rated in accordance with the criteria for selection applicable at the time the original preapplication was rated. The rating of the new program or activity proposed by the amendment must be equal to or greater than the lowest rating received by a funded activity or program during that cycle of preapplication ratings.

(2) Consideration shall be given to whether any new activity proposed can be completed promptly.

(b) Housing Assistance Plan Amendments.

(1) *Comprehensive Grant.* Recipients shall request prior HUD approval in accordance with § 570.312(b).

(2) *Single Purpose Grant.* Recipients shall request prior HUD approval when any of the following conditions exist:

(i) The recipient proposes an increase or decrease of any goal by housing type or household type;

(ii) The recipient proposes a revision of general locations for assisted housing.

(c) *A-95 and citizen participation requirements.* Whenever an amendment requires HUD approval, the requirements of this Subpart for A-95 review and citizen participation must be met, and the recipient shall provide all appropriate State and areawide A-95 clearinghouses with thirty days in which to review and comment on the proposed amendment prior to its submission to HUD.

§ 570.435 Modified OMB Circular No. A-95 procedures for the Small Cities Program.

(a) *General.* (1) Applicants for grants (both Single Purpose and Comprehensive) under the Small Cities Program must comply with all of the procedures set forth in Part I of OMB Circular No. A-95 except as modified below. These procedures also require that program amendments which must receive HUD approval shall be submitted for a thirty day review and comment period prior to submission to HUD pursuant to 24 CFR 52.101(g).

(2) All applicants are urged to contact their A-95 clearinghouses for forms and instructions which the clearinghouses have developed to facilitate their reviews.

(3) Clearinghouses will be of assistance to the applicant and to HUD if their reviews address the appropriate performance factors (§ 570.423(c)), the criteria for selection for the Comprehensive Program (§ 570.424), and the criteria for selection for the Single Purpose Program (§ 570.428), as well as the "subject matter of comments and recommendations" in item 5, Part I, Attachment A of OMB Circular No. A-95, with emphasis on consistency with State, areawide and local plans and compliance with environmental and civil rights laws.

(b) *A-95 procedures for preapplications.* Preapplications for either Comprehensive Grants or for Single Purpose Grants shall be submitted to the appropriate State and areawide A-95 clearinghouses prior to or concurrent with the submission of the preapplication to HUD to serve as the notification of intent to apply for a Federal grant. The clearinghouses shall have thirty days from receipt of the preapplication in which to conduct their review and provide a response to the applicant with a copy to HUD. The clearinghouse must clearly identify the applicant and the activity or program to which the comments are addressed. HUD shall not make a final rating on a preapplication until all clearinghouse comments are considered, or if no clearinghouse comments are received by HUD, thirty days after the deadline for submission of preapplications. Applicants are urged to pro-

vide preapplications to the clearinghouses prior to submission to HUD whenever possible.

(c) *A-95 procedures for full applications.* (1) Applications shall be submitted to the appropriate State and areawide A-95 clearinghouses prior to or concurrently with submission to HUD. The clearinghouses shall have forty-five days from receipt of the application to review the application and give the comments to HUD and the applicant.

(2) HUD will not take any final action on the application until comments have been received or until forty-five days after the application was sent to the clearinghouse. The applicant will be provided an opportunity to respond to clearinghouse comments before HUD takes final action on an application.

(3) If the A-95 comments contain any findings of inconsistency with State, areawide or local plans, or noncompliance with civil rights laws, the applicant must explain why it should proceed with the project.

(2) In § 570.400, paragraphs (b), (f)(1)(i), and (g) are revised to read as follows:

§ 570.400 General.

* * * * *

(b) *Data.* Wherever data are used in this Subpart for selecting applicants for assistance, the source of such data shall be the materials that HUD acquires from the United States Bureau of Census for use in allocating funds pursuant to Subpart B of this part for the same fiscal year appropriation.

* * * * *

(f) * * *
(1) * * *
(i) The application is postmarked or received on or before the final date established by HUD for submission of applications for each fiscal year.

(g) *Program amendments.* Recipients shall request prior HUD approval for program amendments whenever the amendment results from changes in the scope or the objective of the approved program.

* * * * *

(3) Section § 570.402 is cancelled and reserved for future use.

§ 570.402 [Reserved]

(4) In § 570.409, paragraph (d)(1)-(i)(c) is revised to read as follows:

§ 570.409 Reallocated funds.

* * * * *

(d) * * *
(1) * * *
(i) * * *

(c) If reallocated funds are available after meeting the urgent needs in all metropolitan areas in that State, to the same metropolitan area or other metropolitan areas in the same State for use in accordance with the provisions of Subpart F; and

* * * * *

(5) In § 570.409(d)(1)(ii)(B), the reference to "§ 570.402" is changed to "subpart F".

(6) In 570.409(d)(2), the reference to "§ 570.400(b)(1) and § 570.402" is changed to "Subpart F".

(7) In 570.409(e) the phrase "the criteria for selection described in § 570.402(b)" is changed to "Subpart F".

(8) In § 570.409(e)(1)(i) (A) and (B) the references to "§ 570.402(a)" are changed to "§ 570.420(c)".

(9) In § 570.409(e)(2) the reference to "§§ 570.300(b)(1) and 570.402" is changed to "Subpart F".

§ 570.503 [Amended]

(10) In § 570.503(a), the reference to "570.402(d)(5)(iii)" is changed to § 570.433(b)(2)."

§ 570.504 [Amended]

(11) In § 570.504, the reference to "§ 570.402(d)(5)(iii)" is changed to "§ 570.433(b)(2)."

(12) In § 570.910, a new paragraph (b)(11) is added to read as follows:

§ 570.910 Corrective and remedial action.

* * * * *

(b) * * *

(11) In the case of discretionary grants made under Subpart F, adjust, reduce or withdraw the grant, except for funds already expended on otherwise eligible activities which may not be recaptured or deducted from future grants.

* * * * *

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and Sec. 7(d), Department of Housing and Urban development Act (42 U.S.C. 3535(d)).)

Issued at Washington, D.C. February 22, 1978.

ROBERT C. EMBRY, Jr.
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-5181 Filed 2-23-78; 2:24 am]

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WEDNESDAY, MARCH 1, 1978
PART VI



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■

LOANS FOR HOUSING THE ELDERLY OR HANDICAPPED

[4210-01]

Title 24—Housing and Urban Development

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

[Docket No. R-78-322]

PART 885—LOANS FOR HOUSING THE ELDERLY OR HANDICAPPED

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This regulation establishes substantive provisions and procedural requirements governing operation of the section 202 direct loan program for housing for the elderly or the handicapped. This final rule decentralizes the responsibility for reserving section 202 loan fund authority to HUD Field Offices, consolidates section 202 and section 8 processing, and revises the criteria to be used in selecting Borrowers to receive Fund Reservations.

EFFECTIVE DATE: March 31, 1978.

FOR FURTHER INFORMATION CONTACT:

George O. Hipps, Jr., Director, Office of Loan Origination, Department of Housing and Urban Development, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development (HUD) published on February 25, 1976, at 41 FR 8314, a final rule amending Title 24, Part 885, to provide a program of direct loan financing for projects for the elderly or handicapped pursuant to section 202 of the Housing Act of 1959, as amended (12 USC 1701q). Subsequent to publication of that final rule, the Housing Authorization Act of 1976, Pub. L. 94-375, was enacted on August 3, 1976, making certain changes in the provisions of section 202, pursuant to which the Department published a final rule amending Part 885 on January 28, 1977 (42 FR 5568).

On January 31, 1977, the Department gave notice, at 42 FR 5924, that it proposed to amend 24 CFR Part 885 to decentralize the authority for reserving section 202 loan fund authority to HUD field offices, partially consolidate section 202 and section 8 application and review procedures and revise the criteria to be used in selecting Borrowers to receive fund reservations. These changes were originally intended to be applicable to section 202 loan commitments made during Fiscal Year 1977. However, in order to assure that Fiscal Year 1977 section 202 loan funds made available by the Congress would be obligated before the end of that Fiscal Year and thus not lapse, HUD elected to follow the procedures prescribed in the final rule published on February 25, 1976 at 41 FR 8314, as amended on January 28, 1977 at 42 FR 5568, for section 202 loan commitments made during Fiscal Year 1977.

The period for receipt of comments on the proposed rule closed on February 24, 1977. The Department received 47 responses from 45 sources, including four memoranda from HUD field offices. All comments were carefully considered. The most recurrent and significant comments, and the changes from the proposed rule, are discussed below:

1. Twenty respondents addressed the basic decentralization question, of which 17 favored decentralization (including three who would have preferred decentralization only to the Regional Offices) while only three noted opposition. The Department has decided to decentralize program authority and responsibility to field offices.

2. On the issue of priority for projects using section 8 assistance in less than 80 percent of the units, public comments were overwhelmingly negative, and that proposed preference has been dropped from the final rule.

3. During the comment period, twelve respondents objected to continued use of the section 231 mortgage limits. In addition, section 202(a) of the Housing and Community Development Act of 1977, Pub. L. 95-128, signed October 12, 1977, amended section 202 of the Housing Act of 1959 to prohibit use of section 231 mortgage limits to section 202 projects. Therefore, the Department published at 42 FR 57439, November 2, 1977, new cost limits specifically tailored for the section 202 program. With minor clarifying changes, the amended section 885.410 is incorporated in this final rule.

4. Among the 47 responses to the proposed rule, only sixteen commented specifically on the proposed requirement for site control contained in § 885.230(c) of the Proposed Rule, and these responses were divided: sponsors and potential sponsors preferred not to take the financial risks associated with obtaining control of a building site, while certain other respondents favored the resultant faster processing and earlier availability of new housing units. It is the Department's judgment that the advantages of the site control requirement—greater predictability in the distribution of housing resources, increased ability to meet local HAP requirements, increased administrative efficiency, and speedier delivery of housing to those in need—significantly outweigh Sponsors' interest in minimizing the financial risk inherent in the application process. The Department has decided to implement the proposed rule's requirement that evidence of site control be included as a condition of application for a reservation of funds under section 202, and the list of exhibits required in the application (formerly contained in §§ 885.225 and 885.230 of the proposed rule and, subsequently described in § 885.210 of this final rule) shall include documentary evidence of site control, except in the case of Borrowers contemplating projects for the nonelderly handicapped. In the case of Borrowers submitting applications for fund reservations for projects wholly or primarily for the non-elderly handicapped, documentary evidence of site control shall not be required as a part of the application for fund reservation, except that, for simplicity and expediency in processing applications and developing new housing resources, applications for such projects which identify a specific site which is suitable for construction of such a project and under the control of the Borrower corporation shall be deemed preferable to proposals which are not site-specific. In all cases, such applicants, as a minimum, must identify the locality in which they propose to develop the housing project. Also in the interest of expeditious processing and prompt availability of additional housing resources, the Department does not contemplate extensions of the fund reservations, beyond those already provided in § 885.230 of this final rule, for borrowers whose applications are approved prior to identification of a proposed site.

5. Six respondents objected to the proposed shortening of the period between fund reservations and start of construction from 18 to 12 months. The final rule requires that construction or substantial rehabilitation begin within 18 months after the date of the reservation of funds, unless an extension of time not to exceed six (6) months is approved by the Field Office Director.

6. Various other issues were raised in the public comments. These were generally either in favor of the proposed rule and/or the continuation of the section 202 program, or were limited to specific cases and have not required additional changes from the January 31 Proposed Rule.

Consistent with President Carter's directives requiring that regulations be simplified wherever possible, and directives contained in the Housing and Community Development Act of 1977 concerning simplified procedures, this final rule has been shortened and simplified, compared to the January 31 proposed rule, by eliminating the cross-references to sections 880 and 881 of this chapter, and by incorporating the section 8 application requirements formerly contained in §§ 885.230, 885.300, and 885.400 of the proposed rule. By so incorporating the section 8 application requirements,

these regulations assure that project applications which meet the requirements of the section 202 program shall have met the requirements for housing assistance payments under the section 8 Housing Assistance Payments program as provided in the U.S. Housing Act of 1937, as amended.

The Department has determined that this Final rule will not have a significant impact upon the quality of the environment. A Finding of Inapplicability with respect to the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the Secretary, Room 5218, Department of Housing and Urban Development, Washington, D.C. 20410.

It is hereby certified that the economic and inflationary impacts of this final rule have been carefully evaluated in accordance with Executive Order 11821.

Accordingly, 24 CFR Part 885 is amended to read as follows:

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

Subpart A—General Policy

Sec.
885.1 Purpose and policy.
885.5 Definitions.

Subpart B—Allocations of Loan Funds and Processing Applications for Section 202 Fund Reservations

885.200 Allocation of loan fund authority.
885.205 Announcement of fund availability and invitations for applications for section 202 fund reservations.
885.210 Contents of applications.
885.215 Limitation on number of units.
885.220 Application for fund reservation.
885.225 Approval of applications.
885.230 Duration of section 202 fund reservations.

Subpart C—[Reserved]

Subpart D—Direct Loan Financing Procedures

885.400 Requests for direct loan financing.
885.405 Approval of requests for financing.
885.410 Amount and terms of financing.
885.415 Requirements prior to initial loan closing.
885.420 Loan disbursement procedures.
885.425 Completion of construction or substantial rehabilitation, cost certification and approvals by HUD.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Policy

§ 885.1 Purpose and policy.

(a) Purpose. The purpose of the program described in this Part is to provide direct Federal loans under section 202 of the Housing Act of 1959, as amended, 12 U.S.C., 1701q, for housing projects to serve elderly or handicapped families and individuals. The housing projects shall provide the necessary services for the occupants, which may include, among others, health, continuing education, welfare, informational, recreational, homemaker, counseling, and referral services, as well as transportation where necessary to facilitate access to these services. The management plans shall address management and maintenance responsibilities of the Borrower as well as the delivery of necessary services for the occupants.

(b) General Policy. A loan made pursuant to this Part shall be used to finance the construction or substantial rehabilitation of residential projects for the elderly or the handicapped. Consistent with Congressional directives stated in the Housing and Community Development Act of 1977, these regulations have been developed to consolidate the application requirements of both Section 202 and Section 8. Therefore, projects which meet the requirements of the Section 202 program shall be deemed to have met the requirements for housing assistance payments under the Section 8 Housing Assistance Payments Program as provided in the U.S. Housing Act of 1937, as amended.

§ 885.5 Definitions.

As used in this part:

Act means section 202 of the Housing Act of 1959, as amended, 12 U.S.C. 1701q.

Affiliated Entities means entities that the field office determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a single Borrower or of Borrowers that have any identity of interest between themselves or their principals.

Application means the application for a Section 202 Fund Reservation, including all required forms and exhibits submitted in response to an Invitation for such applications.

Assistant Secretary means the Assistant Secretary for Housing-Federal Housing Commissioner.

Borrower means a private nonprofit corporation or a nonprofit consumer cooperative which may be established by the Sponsor, which will obtain a section 202 loan and execute a mortgage in connection therewith as the legal owner of the project. "Borrower" does not mean a public body or the instrumentality of a public body. The purposes of the Borrower must include the promotion of the welfare of elderly and/or handicapped families. No part of the net earnings of the Borrower may inure to the benefit of any private shareholder, contributor or individual and the Borrower may not be controlled by or be under the direction of persons or firms seeking to derive profit or gain therefrom.

Construction means the erection or substantial rehabilitation of structures for Housing and Related Facilities.

Development Cost means the cost of construction or substantial rehabilitation of Housing and Related Facilities, and of the land on which they are located, including necessary site improvements and such other expenses as may be determined by the Assistant Secretary to be properly attributable to the capital cost of the construction or substantial rehabilitation or development of the Housing and Related Facilities.

Elderly or Handicapped Family means:

(a) Families of two or more persons the head of which (or his or her spouse) is 62 years of age or over or is handicapped, or

(b) The surviving member or members of any family described in paragraph (a) living in a unit assisted under the section 202 program with the deceased member of the family at the time of his or her death.

(c) A single person who is 62 years of age or over, or a non-elderly handicapped person between the ages of 18 and 62 or

(d) Two or more elderly or handicapped persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certification provided by the tenant family or prospective tenant family, to be essential to their care or well-being.

Field Office means any HUD Area, Insuring, or Regional Office which is delegated authority to process applications under the section 202 and section 8 programs.

Handicapped Person means any adult having an impairment which is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions. A person also shall be considered handicapped if he or she is developmentally disabled, i.e., if he or she has a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition found by the Secretary of Health, Education, and Welfare to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen, which constitutes a substantial handicap to such individual.

Housing and Related Facilities means rental or cooperative housing

structures constructed or substantially rehabilitated as permanent residences for use by elderly or handicapped families and includes structures suitable for use by families residing in the project or in the area such as cafeterias or dining halls, community rooms or buildings, and workshops or other essential service facilities. "Housing and Related Facilities" does not include nursing homes, hospitals or intermediate and transitional care facilities.

Invitation means the Invitation for Applications for section 202 Fund Reservations issued by a field office and described in § 885.205(c), below.

Region means any one of the ten HUD Regions.

Request means the Request for Direct Loan Financing and all required forms and exhibits submitted by a Borrower for whom a section 202 Fund Reservation has been approved.

Section 8 Program means the Housing Assistance Payments Program-New Construction or Substantial Rehabilitation as defined in Parts 880 and 881 of this Chapter, which implements section 8 of the U.S. Housing Act of 1937, as amended.

Seed Money Expenses mean those expenses which are necessary to cover the costs of planning and obtaining financing for a section 202 project and which will be incurred prior to the initial closing of the construction loan for the project.

Sponsor means any private nonprofit entity, no part of the net earnings of which inures to the benefit of any private shareholder, contributor or individual, which entity is not controlled by, or under the direction of persons or firms seeking to derive profit or gain therefrom, and which is approved by the Field Office Director as to administrative and financial capacity and responsibility. "Sponsor" does not mean a public body or the instrumentality of a public body.

Substantial Rehabilitation means the improvement of the condition of a property from deteriorated and substandard to good condition. Substandard or deteriorated properties are those which do not provide safe and adequate shelter, and in their present condition endanger the health, safety or well-being of the occupants. Substantial Rehabilitation also includes renovation, alteration or remodeling for the conversion or adaptation of property to the design and condition required for use under this part.

Subpart B—Allocation of Loan Funds and Processing Applications for Section 202 Fund Reservations

§ 885.200 Allocation of Loan Fund Authority.

(a) Section 202 loan fund authority will be allocated by the Assistant Secretary to HUD field offices in accordance with the requirements of section 213(d) of the Housing and Community Development Act of 1974 as set forth in 24 CFR 891.402 and 891.403.

(b) Field Office Directors will determine the amount of section 202 loan fund authority to be allocated to each allocation area in accordance with 24 CFR 891.404. In determining the number of units for housing for the elderly and/or handicapped to be allocated to a specific allocation area, the Field Office Director must consider the three-year goals set forth in Housing Assistance Plans and the proportionality requirements with respect to housing type and household type with the objective of achieving the proportionality by household type established in the first three-year goal by the end of Fiscal Year 1979. Where loan fund authority allocated to an allocation area would not be adequate for a feasible project the Field Office Director may either: (1) combine allocation areas, or (2) distribute sufficient loan fund authority for a feasible project and withhold future allocations until such advance is compensated.

(c) Field Office Directors will set aside sufficient contract authority for the Section 8 Housing Assistance Payments Program for use in connection with projects to be financed under Section 202.

§ 885.205 Announcement of Fund Availability and Invitations for Applications for Section 202 Fund Reservations.

(a) Promptly upon determining the amount of loan fund authority to be allocated to each field office, the Assistant Secretary shall publish an Announcement of Fund Availability in the FEDERAL REGISTER indicating:

(1) The amount of lending authority (and approximate number of units) being made available to each field office;

(2) The date by which the field offices will publish Invitations for Applications for section 202 Fund Reservations;

(3) The earliest date applications will be accepted for processing and the closing date; and

(4) Other appropriate guidance to prospective borrowers.

(b) Each field office shall publish a single Invitation in newspapers of general circulation serving the allocation areas in which the housing is desired at least once a week for two consecutive weeks. The field office shall also notify minority media, minority organizations involved in housing and community development, and groups with special interest in housing for the elderly and/or handicapped. Copies of the Invitation shall be available in the field office.

(c) The Invitation shall state:

(1) The designated allocation areas where loan fund authority is being made available, the amount of such authority and the approximate number of units this amount is expected to assist.

(2) That applications from the designated allocation areas will be evaluated first, and that only in the event that an insufficient number of approvable applications are received from the designated allocation areas will applications from other areas be considered for approval.

(3) That, notwithstanding subparagraph (c)(2) above, applications for housing designed wholly for the nonelderly disabled or handicapped from any allocation area will be accepted and evaluated.

(4) That copies of the applicable regulations, instructions, forms and other program information may be obtained at the field office.

(5) The date, time, and place applications will be accepted.

(6) The deadline date for receipt of applications.

§ 885.210 Contents of application.

Each application shall include all of the information, materials, forms, and exhibits enumerated below, on the basis of which the field office will determine the Borrower's eligibility for a reservation of section 202 loan funds and for participation in the section 8 housing assistance payments program. The same information requested of the Borrower in items 10–22, below, must be provided for each Sponsor identified in the application.

(1) The name, address, and telephone number of the Borrower and also of the Sponsor (if any).

(2) The name, title, address, and telephone number of the officer or member of the Board of Directors of the Borrower to whom communications should be addressed.

(3) The following specific information regarding the application:

(a) Number of section 202 units requested.

(b) Number of units for which section 8 Assistance is requested. Section 8 Housing Assistance Payments are required for a minimum of 20 percent of the section 202 units in any project. Applications contemplating use of section 8 contract authority in less than 100 percent of the rental dwelling units must demonstrate that sufficient market demand is anticipated for the unsubsidized units to assure the feasibility of the project.

(c) Dollar amount of section 202 direct loan requested.

(4) A narrative description of the proposed housing, including: (a) number and types of structures; (b) number of stories; (c) number of units by size (number of bedrooms); (d) special amenities or features.

(5) A narrative description of the anticipated occupancy (elderly and/or handicapped [physicially handicapped or developmentally disabled, i.e., mentally retarded, cerebral palsy, or epilepsy]).

(6) A statement as to whether the Borrower (and/or Sponsor) has submitted or is planning to submit an application to any other field office in response to the current Invitation. If so, indicate the city and state where the proposed project is to be located, the number of units requested, and the field office to which the proposal was or will be submitted.

(7) A signed certification of the Borrower's intention to comply with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Executive Order 11246, and section 3 of the Housing and Urban Development Act of 1968.

(8) A Housing Consultant's Certificate and Contract (if consultant services have been employed by the Borrower).

(9) Evidence of the Borrower's legal status as a nonprofit corporation.

(10) A Request for Preliminary Determination of Eligibility as a Nonprofit Sponsor and/or Mortgagor on a form prescribed by HUD.

(11) A statement evidencing the Borrower's ties to the community and support from local community groups.

(12) The names and addresses of the officers and directors of the Borrower, and such other information as shall be required on the prescribed form, together with a certification by each officer or director that he or she will not receive any compensation from the Borrower for his or her services, and does not have any financial interest in any contract with the Borrower, or in any firm or corporation which has a contract with the Borrower.

(13) Satisfactory evidence that the Borrower has the necessary legal authority to finance, construct or substantially rehabilitate and maintain the project and to apply for and receive the proposed loan, that it meets any requirements as to corporate organization, and that it has authority to enter into such contract obligation and execute such security instruments as may be required by HUD.

(14) Evidence of previous participation in HUD programs, if any, by the Borrower, its officers or directors, on such forms as may be prescribed by HUD.

(15) A description of all rental housing projects and/or medical facilities owned and operated by the Borrower.

(16) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Borrower or its officers, directors, or trustees in their corporate capacity.

(17) A description of the Borrower's past or current involvement in any programs or of its provision of services, other than housing, if any, which would give evidence of the organization's management capabilities.

(18) A statement as to whether the Borrower has received a section 202 fund reservation since May 1, 1976.

(19) A description of the Borrower's capability to sponsor, develop, own, manage, and provide appropriate services in connection with housing for the elderly or handicapped.

(20) An estimate of start-up expenses and the source of funds to meet these expenses. If the Borrower plans to use section 106(b) seed money loans, an application for such loan must be submitted with required attachments.

(21) Copies of balance sheet(s) and statement(s) of income and expenses for each of the past three years the Borrower has operated.

(22) In the case of project proposals to be developed exclusively or primarily for the nonelderly handicapped, identification of the locality in which the Borrower proposes to develop the project.

(23) In the case of project proposals to be developed for the elderly, the following specific information with respect to the proposed project:

(a) Documentary evidence that the Borrower has control of the site, e.g. a copy of a contract(s) of sale for the site or a copy of the site option agreement(s), a deed, or other legal commitment for the site.

(b) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

(c) A sketch of the site plan showing the general development of the site including the location of the proposed building(s), streets, parking areas and drives, service areas, and unusual site features.

(d) Evidence that the proposed construction or rehabilitation is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action to make the construction or rehabilitation permissible and the basis for belief that such action will be completed successfully prior to the receipt of the conditional commitment for direct loan financing (e.g., a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, etc.).

(e) A statement as to whether proposed project will displace site occupants. If so, the proposal shall state the number of families, individuals, and business concerns to be displaced (identified by race or minority group status and whether they are owners or renters), and shall demonstrate that relocation is feasible and how necessary relocation payments, if any, will be funded.

(f) A showing that the proposal meets any special requirements or restrictions necessary for compliance with the local HAP.

(g) A statement that gross rents (the sum of contract rents and allowances, if any) will not exceed published Fair Market Rents by more than that allowed by the Fair Market Rent Limits pursuant to § 880.108(a) or § 881.108(a) of the Regulations.

(24) A demonstration that the application meets any other requirements as may be imposed by or upon the Department and which requirements are made known to the applicant prior to submission of the application.

§ 885.215 Limitation on numbers of units.

No organization shall participate as Sponsor, Co-sponsor, or Borrower in the filing of an application or applications for a reservation of section 202 loan funds in a single Region in a single fiscal year in excess of that necessary to finance the construction or substantial rehabilitation of 300 units of housing and related facilities.

(a) This limitation shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or non-affiliated entities.

(b) Affiliated entities which submit separate applications shall be deemed to be a single entity for purposes of this 300 unit limitation.

§ 885.220 Review of application for fund reservation.

(a) *Initial Screening.* To be eligible for selection, an Application must be received by the field office within the time period specified in the Invitation and must be complete. In order to determine whether an Application is complete and acceptable for technical processing, the field office shall perform an initial screening upon receipt of the Application.

(b) *Action on Applications Found To Be Incomplete.* If an Application is determined to be incomplete, the Borrower shall be advised in writing of the deficiencies and that additions or changes will be accepted if they are received on or before a specified date (generally 10 calendar days from the date of the request for additional information).

(c) *Preliminary Evaluation.* Applications found to be complete shall be eligible for a preliminary evaluation to determine whether the entity filing the Application is, in fact, an eligible nonprofit corporation, and whether the Application is responsive to the Invitation.

(d) *Technical Processing.* When an Application is determined to be complete and responsive to the Invitation,

technical processing, consisting of the following, shall be accomplished:

(1) For each Application which is determined to be subject to A-95 clearance, the field office shall send a copy to the appropriate A-95 Clearinghouse for review, inviting a response within 30 calendar days from the date of transmittal, unless the Borrower has provided appropriate site and preliminary project information to the clearinghouse prior to submitting its application to HUD, in which case the application shall include the comments, if any, of the clearinghouse;

(2) For purposes of compliance with section 213 of the HCD Act of 1974, the field office shall forward (if not previously submitted by the Borrower) a notification, in the form prescribed by HUD, to the Chief Executive Officer (or such designee as that Officer may designate) of the unit of general local government in which the proposed housing is to be located and shall invite a response within 30 calendar days from the date of the notification letter;

(3) The Application will be evaluated by the field office on the basis of those factors which may be necessary to determine the eligibility and acceptability of the Sponsor and Borrower, acceptability of the location (site), acceptability of the design concept, compliance with the Fair Market Rent Limits, and the comments, if any, received during the response periods from the appropriate A-95 Clearinghouse and from the unit of general local government.

(4) If, in its evaluation of all pertinent factors, the field office finds deficiencies which, in its judgment, are correctable within a reasonable time, it may grant such additional time as it deems appropriate to enable the Borrower to correct such deficiencies. Otherwise the Borrower shall be sent a notification specifying the deficiencies and stating that the Application has been rejected.

(5) Prior to selection, the field office shall complete an environmental review in compliance with the requirements of HUD procedures pursuant to the National Environmental Policy Act of 1969. Prior to selection, the field office shall determine whether the proposed site is in compliance with Executive Order 11988, Floodplain Management, and Executive Order 11990, Wetlands Protection.

(6) Based on the factors set forth in this paragraph (d), the field office shall determine for each allocation area the Applications which, in its judgment, are approvable. Selections then shall be made in accordance with paragraph (e) of this section.

(e) For each allocation area, the field office shall rank order each Application on the basis of its assessment of the Borrower's qualifications, the proposed site, the design concept, and the comments, if any, received from the appropriate A-95 clearinghouse and from the unit of general local government. The field office shall identify for selection the highest ranking Applications in descending order which most reasonably approximate the estimated maximum number of units which can be funded in any allocation area under the allocation of fund authority; provided, however, that in accordance with 24 CFR 891.404(d) priority will be given to acceptable Applications from localities which did not previously receive assistance.

(f) The ranking list developed pursuant to paragraph (e) above may be modified by the Field Office Director under the following circumstances:

(1) If selection solely on the basis of the ranking would result in a violation of site and neighborhood standards; or

(2) Where necessary to provide an appropriate distribution by dollars and units for projects for the non-elderly handicapped.

§ 885.225 Approval of applications.

(a) A Borrower whose Application is approved shall be issued a notice of section 202 Fund Reservation in a format prescribed by the Assistant Secretary, specifying:

(1) The amount of the section 202 fund reservation, the number and mix of units, and the location (or locality, in the case of projects to serve the non-elderly handicapped) of the proposed project.

(2) The amount of section 8 contract authority reserved to the project.

(3) A date by which the Borrower is required to return a copy of the notification with an indication of its acceptance.

(b) If the Borrower does not accept the notification by the date specified, the field office may notify the Borrower that its previous approval of the Borrower's Application is withdrawn;

(c) No part of the loan funds reserved may be transferred by the Borrower;

(d) A section 202 fund reservation may be used only in connection with the project which has been approved in connection with the Application and may not be transferred to a section 8 project which is proposed in response to an invitation pursuant to § 880.203 or 881.203 of this Chapter;

(e) Subject to the availability of funds, and in accordance with directives of the Assistant Secretary, the Field Office Director may amend the amount of a fund reservation approved pursuant to paragraph (b) of this section at any time before the final closing of a loan.

§ 885.230 Duration of section 202 funds reservation.

The Field Office Director, subject to the approval of the Assistant Secretary, may cancel a fund reservation at any time if it can be established that the Borrower is not making satisfactory progress toward the start of construction, and shall cancel any reservations of section 202 loan funds for proj- ects for which the construction or substantial rehabilitation is not commenced within the eighteen-month period following issuance of the Notice of section 202 Fund Reservation, unless an extension of time, not to exceed six months, is requested of and granted by the Field Office Director.

Subpart C—[Reserved]

Subpart D—Direct Loan Financing Procedures

§ 885.400 Request for direct loan financing.

Simultaneously with the notice of section 202 Fund Reservation, the field office will invite the Borrower to submit a request for a conditional or firm commitment for direct loan financing. The Request for Direct Loan Financing shall be on forms prescribed by HUD, shall include all such exhibits as HUD may require, and must be submitted, within the time limit specified in the notice of section 202 Fund Reservation, to the field office serving the area in which the proposed project will be located.

(a) Processing of a request for a conditional commitment for direct loan financing shall include an evaluation of the Contract Rents, the Borrower's Affirmative Marketing Plan and the financial feasibility of the project. Contract Rents shall be established by the field office within the applicable Fair Market Rent Limits, and shall be no higher than the rents determined by HUD to be necessary to cover operating costs, debt service on the section 202 loan, and reasonable reserves. In the case of projects requesting section 8 Contract Authority for less than all of the rental dwelling units, the Contract Rents must be within such levels that sufficient market demand can be anticipated for the unsubsidized rental dwelling units to assure the feasibility of the project.

(b) Processing of a request for a firm commitment shall include review of the final plans and specifications, review of the Contractor/Borrower's cost estimate, and a review of the conclusions reached during conditional commitment processing. In the case of Borrowers permitted by the Field Office Director to submit requests for firm commitment without going through conditional commitment processing the field office shall perform the steps set forth in paragraph (a) above when carrying out firm commitment processing.

(c) Any Contract Rents which are or have been proposed by a Borrower may be modified by the field office at

any time prior to the execution of the Agreement to Enter into a Housing Assistance Payments Contract.

§ 885.405 Approval of requests for direct loan financing.

The field office shall review the Request for Direct Loan Financing and the required exhibits and shall notify the Borrower of its approval by issuance of a conditional or firm commitment, as appropriate, or of its disapproval of the Request.

(a) A conditional commitment shall be issued in a format prescribed by the Assistant Secretary and shall include the following:

(1) The estimated cost of the project,

(2) The "as-is" value of the site and the land value fully improved (with offsite improvements installed),

(3) The detailed estimates of operating expenses and taxes,

(4) The supportable cost,

(5) The financial requirements,

(6) The loan amount,

(7) The approved contract rents. If the approved rents are lower than those proposed by the Borrower, the commitment shall state the reason(s) for the reduction(s). The conditional commitment also shall specify the time period within which the Borrower must submit a request for a firm commitment for direct loan financing.

(b) A firm commitment shall be issued in a format prescribed by the Assistant Secretary and shall include the following:

(1) Approval of the final plans and specifications;

(2) A statement that the Contractor/Borrower's cost estimates have been reviewed;

(3) Reaffirmation of the conclusions reached during conditional commitment processing or a statement as to what changes to earlier conclusions have been approved.

If the Borrower was permitted to apply for a firm commitment without passing through conditional commitment processing, the items listed in paragraph (a) above shall be included in the issuance of the firm commitment for direct loan financing. Issuance of a firm commitment evidences the Assistant Secretary's approval of the request for direct loan financing, and sets forth the terms and conditions upon which the loan shall be made and the loan proceeds disbursed.

(c) If a request for conditional or firm commitment for direct loan financing is not forthcoming within the time periods specified in the Notice of section 202 Fund Reservation or the Conditional Commitment, as appropriate, the Field Office Director may cancel the fund reservation, consistent with the limitations specified in § 885.230.

§ 885.410 Amount and terms of financing.

(a) The amount of financing approved shall be the amount stated in the Notice of section 202 Fund Reservation, including any increase approved by the field office prior to the final closing of a loan; provided, however, that the amount of financing provided shall not exceed the lesser of:

(1) The dollar amounts stated in subparagraphs (b) through (f) of this section, or

(2) The total development cost of the project as determined by the field office.

(b) For such part of the property or project attributable to dwelling use (excluding exterior land improvement as defined by the Assistant Secretary) the maximum loan amount, depending on the number of bedrooms, shall be: (1) $19,000 per family unit without a bedroom, (2) $21,500 per family unit with one bedroom, (3) $25,000 per family unit with two bedrooms.

(c) In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the field office may increase the dollar limitations per family unit as provided in paragraph (c) of this section, not to exceed: (1) $21,700 per family unit without a bedroom, (2) $24,900 per family unit with one bedroom, (3) $30,800 per family unit with two bedrooms.

(d) Reduced loan amount—leaseholds. In the event the loan is secured by a leasehold estate rather than a fee simple estate, the allowable cost of the property upon which the loan amount is based shall be reduced by the value of the leased fee.

(e) Adjusted loan amount—rehabilitation projects. A loan amount which involves a project to be rehabilitated shall be subject to the following additional limitations:

(1) Property held in fee. If the Borrower is the fee simple owner of the project not encumbered by a mortgage, the maximum loan amount shall not exceed 100 percent of the cost of the proposed rehabilitation.

(2) Property subject to existing mortgage. If the Borrower owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the section 202 loan, the maximum loan amount shall not exceed the cost of rehabilitation plus such portion of the outstanding indebtedness as does not exceed the fair market value of such land and improvements prior to the rehabilitation, as determined by the field office.

(3) Property to be acquired. If the project is to be acquired by the Borrower and the purchase price is to be financed with a part of the section 202 loan, the maximum loan amount shall not exceed the cost of the rehabilitation plus such portion of the purchase price as does not exceed the fair market value of such land and improvements prior to the rehabilitation, as determined by the field office.

(f) Increased Mortgage Limits—High Cost Areas.

(1) In any geographical area where the Assistant Secretary finds cost levels so require, the Assistant Secretary may increase, but not to exceed 50 percent, the dollar amount limitations set forth in § 885.410 (b) and (c).

(2) If the Assistant Secretary finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum loan amounts provided in this section the principal amount of mortgages may be increased by such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(g) The loan shall bear interest at a rate established by the Secretary by adding:

(1) A rate determined by the Secretary of the Treasury to be the average interest rate on all interest bearing obligations to the United States then forming a part of the public debt computed at the end of the fiscal year immediately prior to the date on which the loan is made; plus (2) and allowance to cover administrative costs and probable losses under the program, which allowance has been determined by the Secretary of HUD to be one percent (1%) per annum during the construction period, and one half of one percent (0.5%) thereafter.

(h) Loans shall bear interest at the rate in effect at the time the loan is made. A loan shall be deemed to be made as of the date of the initial loan closing pursuant to § 885.415. If a loan is made in a fiscal year other than that fiscal year in which the Request is processed, and the interest rate for the year in which the loan is made is different from the rate used for processing, the field office shall reprocess the Request based on the new rate.

(i) The loan shall be secured by a first mortgage on real estate in fee simple or long term leasehold; the mortgage shall be repayable during a term not to exceed 40 years and shall be subject to such terms and conditions as shall be determined by the Assistant Secretary.

(j) In order to assure HUD of the Borrower's continued commitment to the development, management, and operation of the project, a minimum capital investment is required of section 202 Borrowers of one-half of one percent (0.5%) of the mortgage amount committed to be disbursed, not to exceed the amount of $10,000.

Section 106(b) loans made pursuant to section 106 of the Housing Act of 1968 may not be utilized to meet the minimum capital investment requirement. Such minimum capital investment shall be placed in escrow at the initial closing of the section 202 loan and shall be held by HUD or other escrow agent acceptable to the field office for not less than a three-year period from the date of initial occupancy and may be used for operating expenses or deficits as may be directed by the field office. Any unexpended balance remaining in the minimum capital investment account at the end of the escrow period shall be returned to the Borrower.

§ 885.415 Requirements prior to initial loan closing.

Prior to the initial loan closing, the Borrower shall furnish such executed documents on HUD-approved forms as the field office may require including the following:

(a) Agreement to Enter into Housing Assistance Payments Contract;

(b) Certificate of Incorporation of the Borrower as required by applicable state or local law;

(c) Internal Revenue Service Section 501(c) (3) or (4) tax exemption ruling;

(d) Certificate of Relationships and Nonprofit Motives of the Borrower;

(e) Mortgagee's Attorney's Opinion as to the legal status of the Borrower, building permit, and compliance with zoning laws and requirements;

(f) Regulatory Agreement for Nonprofit Section 202/Section 8 Mortgagors;

(g) Mortgagor's Oath that the Project will not be used for hotel or transient purposes;

(h) Agreement and Certification to certify actual costs and as to any financial and family relationships between the Borrower, the architect, general contractor and subcontractors;

(i) Assurance of Compliance with HUD Regulations under Title VI of the Civil Rights Act of 1964;

(j) Note and First Mortgage or Deed of Trust executed in accordance with § 885.405 (h);

(k) A title policy insuring that the mortgage constitutes a first lien on the project;

(l) Building Loan Agreement setting forth the conditions for loan disbursement;

(m) Construction or Substantial Rehabilitation Contract between the Borrower and the General Contractor which shall be a cost plus contract with an upset price and may provide for an incentive payment to the Contract or for early completion;

(n) Assurance of Completion of Construction or Substantial Rehabilitation Contract in the form of 50 percent Performance and Payment Bond or a cash escrow in the amount of 25 percent of total construction cost;

(o) Escrow Agreement in the amount of the cost of any off-site facilities, funded by a cash deposit or letter of credit to assure completion of the facilities;

(p) A Contractor's and Sub-Contractor's Certification Concerning Labor Standards and Prevailing Wage Requirements.

§ 885.420 Loan Disbursement Procedures.

(a) Disbursements of loan proceeds shall be made directly by HUD to or for the account of the Borrower and may be made through an approved lender, mortgage servicer, title insurance company, or other agent satisfactory to the Borrower and HUD.

(b) All disbursements to the Borrower shall be made on a periodic basis in an amount not to exceed the HUD-approved cost of portions of construction or substantial rehabilitation work completed and in place, minus the appropriate holdback, as determined by the field office.

(c) Requisitions for loan disbursements shall be submitted by the Borrower on forms to be prescribed by the Assistant Secretary and shall be accompanied by such additional information as the field office may require in order to approve loan disbursements under this Part, including but not limited to evidence of compliance with the Davis-Bacon Act, Department of Labor regulations, all applicable zoning, buildings and other governmental requirements, and such evidence of continued priority of the mortgage of the Borrower as the Assistant Secretary may prescribe.

§ 885.425 Completion of construction or substantial rehabilitation, execution of HAP contract, and cost certification and approvals by HUD.

(a) The requirements for completion of construction or substantial rehabilitation and approvals by HUD shall be satisfied by the Borrower prior to submission of a final requisition for disbursement of loan proceeds.

(b) Upon issuance of a Certificate of Occupancy the HAP Contract shall be executed first by the Borrower and then by HUD, however, payments under the HAP Contract shall only be made with respect to occupied units, and further, the Borrower shall not be entitled to receive vacancy payments for unoccupied units until and unless the project is finally accepted by HUD. If the Project is to be completed in stages, the procedures of this section shall apply to each stage.

(c) The Borrower shall submit to the field office all documentation required for final disbursement of the loan including:

(1) A Borrower's/Mortgagor's Certificate of Actual Cost, showing the actual cost to the mortgagor of the cost plus construction contract, architectural, legal, organizational, offsite costs, and all other items of eligible expense. The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or to any of its officers, directors, or members.

(2) A verification of the Certificate of Actual Cost by an independent Certified Public Accountant or independent public accountant acceptable to the field office.

(3) A certification of the general contractor (and such subcontractor, material suppliers, and equipment lessors, as the Assistant Secretary or field office may require), on a form prescribed by the Assistant Secretary, as to all actual costs paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fee and kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders, partners, or members.

Issued at Washington, D.C., on February 22, 1978.

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

[FR Doc. 78-5314 Filed 2-28-78; 8:45 am]

federal register

WEDNESDAY, MARCH 1, 1978
PART VII



OFFICE OF MANAGEMENT AND BUDGET

■

BUDGET DEFERRALS

Reports

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

DEPARTMENTS OF COMMERCE, INTERIOR AND TREASURY

Budget Deferrals

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Impoundment Control Act of 1974, I herewith report a new Department of Commerce deferral of Maritime Administration funds totalling $122 million in budget authority and a new deferral of $0.4 million in outlays for the Antirecession financial assistance fund in the Department of the Treasury.

In addition, I am reporting routine revisions to two previously transmitted deferrals. A Department of the Interior deferral is increased by $2 million in budget authority, and a Department of the Treasury deferral is increased by $4.1 million in outlays.

The details of each deferral are contained in the attached reports.

JIMMY CARTER.

THE WHITE HOUSE,
February 23, 1978.

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral No.	Item	Budget Authority
	Department of Commerce:	
	Maritime Administration	
D78-57	Ship construction	122,000
	Department of the Interior:	
	Bureau of Land Management	
D78-15A	Oregon and California grant lands	33,180
	Department of the Treasury:	
	Office of the Secretary	
D78-58	Antirecession financial assistance fund	388
D78-28B	State and local government fiscal assistance trust fund	5,779
	Total, deferrals	161,347

* *

SUMMARY OF SPECIAL MESSAGES
FOR FY 1978
(in thousands of dollars)

	Rescissions	Deferrals
Sixth special message:		
New items	---	122,388
Changes to amounts previously submitted	---	6,048
Effect of the sixth special message	---	128,436
Previous special messages	57,923	4,764,782
Total amount proposed in special messages	57,923 (in 4 rescission proposals)	4,893,218 1/ (in 58 deferrals)

1/ This amount represents budget authority except for $9,573,000 consisting of three Department of the Treasury deferrals of outlays only (D78-50, D78-58 and D78-28B).

Deferral No: D78-57

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Commerce	New budget authority (P.L. 95-86) $135,000,000
Bureau: Maritime Administration	Other budgetary resources 229,184,322
Appropriation title & symbol: Ship Construction 1/ 13X1708	Total budgetary resources 364,184,322
	Amount to be deferred: Part of year $ ____
	Entire year 122,000,000
CMB identification code: 13-1708-0-1-403	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program: ☒ Yes ☐ No	☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification:

This appropriation, available until expended, provides subsidies to U.S. shipyards for the construction and reconstruction of ships to be operated in the U.S.-foreign trade.

The deferral, totalling $122,000,000, is based on the current projections of reliable demand for U.S. shipbuilding. Anticipated new shipbuilding contracts during FY 1978 can be funded with the $242,184,322 apportioned for this period. The amount deferred will be used in succeeding years.

This deferral action is taken in accordance with the Antideficiency Act (31 U.S.C. 665) which provides that funds not limited to a definite period of time shall be apportioned so as to achieve their most effective and economical use.

Estimated Effects:

The deferral will not delay any planned construction or reconstruction of subsidized ships and will not affect the international competitive position of U.S. shipyards.

Outlay Effect:

There is no outlay effect of this deferral.

1/ This account was the subject of a similar deferral in FY 1977.

D78-15A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D78-15 transmitted to the Congress on October 3, 1977, and printed as House Document No. 95-235.

The amount deferred for the Oregon and California Grant Lands appropriation is $33,180,327, an increase of $1,890,327 over the amount previously deferred. This change results from an increase in the amount estimated to be available for appropriation in FY 1978, partially offset by an increase in planned FY 1978 obligations and a decrease in balances carried over from FY 1977.

Deferral No: D78-15A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of the Interior	New budget authority (P.L. 95-74) $ 56,500,000*1/
Bureau Bureau of Land Management	Other budgetary resources 20,845,327*
Appropriation title & symbol 14X5136 Oregon and California Grant Lands 2/	TOTAL budgetary resources 77,345,327*
	Amount to be deferred: Part of year ____ Entire year 33,180,327*
OMB identification code: 14-5136-0-2-302	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-year	Type of budget authority: [ ] Appropriation [ ] Contract authority [X] Other Appropriated Receipts

Justification:*

Funds in this account are derived from an indefinite no-year appropriation equivalent to 25 percent of timber sale receipts from revested Oregon and California Railroad grant lands. The appropriated receipts provide for management, development, and protection of the Federally-owned Oregon and California grant lands, including the construction and maintenance of roads. Because the appropriation is based on receipts collected in the same fiscal period and the receipts are based on the timber harvested, the total amount available for obligation can only be estimated. Not only may actual receipts vary from estimates, but receipts for the last two months of the fiscal period are not known in time to make programmatic adjustments to offset a possible shortfall between estimated and actual amounts. Deferral is planned to cushion fluctuating receipt levels. This deferral is taken pursuant to the Antideficiency Act (31 U.S.C. 665).

Receipts for FY 1977 totaled $212,090,848 with an unobligated balance of $20,845,327 carried forward into FY 1978. New budget authority available in 1978 under terms of the appropriation is estimated to equal $56,500,000. Total resources for this program are estimated at $77,345,327. The FY 1978 obligation program of $44,165,000 is consistent with the President's Budget for FY 1979 and results in a deferral of $33,180,327.

1/ Estimated. The appropriation is for "an amount equivalent to 25 percent of the aggregate of all receipts during the current fiscal year from the revested Oregon and California Railroad grant lands."

2/ This account was the subject of a similar deferral during FY 1977.

* Revised from previous report.

Deferral No: D78-58

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of the Treasury Bureau: Office of the Secretary	New budget authority (P.L. 95-119) $1,400,000,000 Other budgetary resources 83,063,000 Total budgetary resources 1,483,063,000
Appropriation title & symbol Antirecession Financial 1/ 2/ Assistance Fund 207/80108 208/90108	Amount to be deferred: Part of year 3/ $388,000 Entire year
CFS identification code: 20-0108-0-1-852	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program ☒ Yes ☐ No	☒ Other P.L. 94-369, P.L. 95-30
Type of account or fund: ☐ Annual ☒ Multiple-year September 30, 1978 / September 30, 1979 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

The Antirecession Financial Assistance Fund provides for federal economic assistance to State and local governments to help prevent those governments from taking budget related actions which are injurious to national economic health. These quarterly countercyclical payments are based on the relative size of the revenue sharing payments made to the State and local governments and the extent to which the unemployment rates present in those areas, in the appropriate quarter, exceed 4.5 percent. This deferral represents payments which have been withheld from various governments for reasons of noncompliance with the requirements of the Public Works Employment Act 1976 (P.L. 94-369).

Estimated Effects

The release of these funds is contingent upon the various governments' compliance with the law by submitting required forms and reports.

Outlay Effect

There is no outlay effect of this deferral. The funds will be made available this fiscal year.

1/ This account is the subject of another deferral, D78-26C.
2/ This account was the subject of a similar deferral (D78-50) earlier this fiscal year.
3/ Outlays only.

Estimated Effects:

There will be no programmatic impact in FY 1978.

Outlay Effect:

There is no outlay effect of this deferral.

D78-28B

Deferral No: D78-28B

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of Public Law 93-344.

This report revises Deferral No. D78-28A transmitted to the Congress on December 15, 1977, and printed as House Document 95-270.

This revision of a deferral for the State and local government fiscal assistance trust fund in the Office of the Secretary of the Treasury increases the previously reported deferral from $1,711,000 to $5,779,000. This increase of $4,068,000 results from nonreceipt of assurance forms from recipient governments and noncompliance with the requirements of the State and Local Fiscal Assistance Act, as amended.

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of the Treasury	New budget authority (P.L. 95-119): $6,854,924,000
Bureau: Office of the Secretary	Other budgetary resources: 46,347,000*
Appropriation title & symbol: State and Local Government 1/ 2/ Fiscal Assistance Trust Fund 20X8111	Total budgetary resources: 6,901,271,000*
	Amount to be deferred: Part of year 3/: $5,779,000*
	Entire year:
OMB identification code: 20-8111-0-7-851	Legal authority (in addition to sec. 1013): [x] Antideficiency Act
Grant program: [x] Yes [ ] No	[x] Other P.L. 92-512, Sections 121 and 123; P.L. 94-488
Type of account or fund: [ ] Annual; [ ] Multiple-year ____ (expiration date); [x] No-year	Type of budget authority: [x] Appropriation; [ ] Contract authority; [ ] Other ____

Justification

The State and Local Government Fiscal Assistance Trust Fund is the vehicle for disbursement of general revenue sharing funds. Scheduled payments to State and local governments are made on a quarterly basis. This deferral represents payments which have been withheld from various governments involved in annexations or disincorporations and for reasons of noncompliance with the requirements of the State and Local Fiscal Assistance Act, as amended.

Estimated Effect

The release of these funds is contingent upon adherence by the various governments to the compliance regulations, and determinations as to which higher level of government is eligible to receive those funds withheld because of annexations and disincorporations.

Outlay Effect

There is no outlay effect of this deferral. The funds will be made available this fiscal year.

1/ This account is the subject of another deferral, D78-27C.
2/ This account was the subject of a similar deferral during FY 1977.
3/ Outlays only.
* Revised from previous report.

[FR Doc. 78-5509 Filed 2-27-78; 3:29 pm]