WEDNESDAY, MARCH 1, 1978

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Presidential determination authorizing financial assistance 8249

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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.
INFORMATION AND ASSISTANCE

Questions and requests for specific information may be made by dialing 202-523-5240.

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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
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
RCIA—Rural Cuba Administration
RDA—Rural Development Administration
REA—Rural Electrification Administration
RTB—Rural Telephone Bank
SCS—Soil Conservation Service

COMMERCE—COMMERCE DEPARTMENT
Census—Census Bureau
EDA—Economic Development Administration
ITIA—Industry and Trade Administration
MA—Maritime Administration
MBE—Minority Business Enterprise Office
NBS—National Bureau of Standards
NPP—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—Bonnieville Power Administration
ERA—Economic Regulatory Administration
EIA—Energy Information Administration
ERO—Energy Research Office
ETO—Energy Technology Office
FERC—Federal Energy Regulatory Commission
FEDERAL REGISTER

HEW—HEALTH, EDUCATION, AND WELFARE DEPARTMENT
ADAMHA—Alcohol, Drug Abuse, and Mental Health Administration
CPC—Center for Disease Control
FDA—Food and Drug Administration
HCPA—Health Care Financing Administration
HDC—Human Development Services Office
HRA—Health Resources Services Administration
NIH—National Institutes of Health
OE—Office of Education
PHS—Public Health Service
RSA—Rehabilitation Services Administration
SRA—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
FEC—Federal Housing Commissioner, Office of Assistant Secretary
FRA—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&WB—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
OMO—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
ATP—Alcohol, Tobacco and Firearms Bureau
Comptroller—Comptroller of the Currency
ESO—Economic Stabilization Office (temporary)
PS—Postal 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
CASP—Cost Accounting Standards Board
CEQ—Council on Environmental Quality
CFTC—Commodity Futures Trading Commission
CITA—Textile Agreements Implementation Committee
CPC—Consumer Product Safety Commission
CRC—Civil Rights Commission
CSA—Community Services Administration
CSC—Civil Service Commission
CSC/PFRAC—Federal Prevailing Rate Advisory Commission
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
FER—Federal Election Commission
FHLLB—Federal Home Loan Bank Board
FMC—Federal Maritime Commission
FPC—Federal Power Commission
FRS—Federal Reserve System
GAO—General Accounting Office
GSA—General Services Administration
GSA/ADTS—Automated Data and Telecommunications Service
GSA/FPA—Federal Preparedness Agency
GSA/FOSS—Federal Supply Service
GSA/NARS—National Archives and Records Service
GSA/PBS—Public Buildings Service
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ICCP—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
NSP—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
PTC—Pennsylvania Avenue Development Corporation
PRC—Postal Rate Commission
PS—Postal Service
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RRB—Railroad Retirement Board
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List of Public Laws
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

S. 1340 Pub. L. 95-238
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,

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.

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

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.

[FR Doc. 78-5497 Filed 2-27-78; 2:42 pm]
This section of the Federal Register contains regulatory documents having general applicability and legal effect most of which are key 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

### General Provisions

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### 6325-01

#### 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.

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


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]
Title 7—Agriculture

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:


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 runoff point source pollution. Landowners 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) • • • •

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) • • •


• • • •

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

For Subpart C:


BOB BERGLAND, Secretary of Agriculture.

For Subpart G:


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

[FR Doc. 78-5356 Filed 2-28-78; 8:45 am]

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.


FOR FURTHER INFORMATION CONTACT:

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 (l) 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 programs, 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 capital reinvestment in the area;

(ii) A declining 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 may 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 to replace the efforts of the economic adjustment program of the Department of Defense.

§ 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.
§ 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.


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, Arndt. 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.


FOR FURTHER INFORMATION CONTACT:  

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, 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 sections (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.


By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,  
Secretary.

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

RULES AND REGULATIONS

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.


FOR FURTHER INFORMATION CONTACT:  

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 (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-
consumers 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 decided that the CPILP label could meet the corresponding labeling requirements or recommendations promulgated by other agencies, so that the information disclosure requirements of those agencies can be satisfied by product labeling included 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 through participation 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 Lawrence H. Hodges, Vice President, Technical Affairs, J I Case Co., 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 John Waller, 202-755-6550.

The 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 through participation in CPILP. Interested persons were invited to submit written comments on the proposed amendment on or before January 30, 1978.

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, 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, 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.


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.

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(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.


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


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. 709-78)

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.

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.


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.


FOR FURTHER INFORMATION CONTACT:


FEDERAL REGISTER, VOL. 43, NO. 41—WEDNESDAY, MARCH 1, 1978
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(b) regarding the arc of visibility and location of the stern light; annex I, section 2(a)(ii) 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)(1) 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”:

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Number</th>
<th>Distance in meters of forward masthead light below minimum required height,</th>
<th>SEC. 2(K), annex I</th>
</tr>
</thead>
<tbody>
<tr>
<td>USS Cincinnati</td>
<td>SSN-693</td>
<td>3.49</td>
<td>3.4 1.6 below.</td>
</tr>
</tbody>
</table>

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 21(b) and the lights required by rules 24, 27, and 30(d)(1) are not installed on submarines.

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


W. GRAHAM CLAYTON, 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

(EER 1130-2-3241)

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 recommenda-

tion contained within a Comptroller General of the United States Report to the Congress, dated January 2, 1977. The 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:


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 the Navy is the responsibility of the marketing agencies. Federal investment is the responsibility 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 11621 and OMB Circular A-107 (statutory authority Pub. L. 90-483).


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 (FOAs) having generating facilities producing marketable electric power.


(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 the Army not required in the operation of such projects shall be delivered to the Secretary of Interior for transmission 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. 85-91) 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 Administration; 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]

§ 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]

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.

SUMMARY: These regulations set forth the conditions for coverage and reimbursement of rural health clinic services 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.


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.

ADDRESS: Address comments to: Administrator, Health Care Financing Administration, Department of
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 governing 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 Medicare covered services furnished by certified rural health clinics beginning July 1, 1978.

Notice of proposed rulemaking governing the coverage and reimbursement of rural health clinic services under Medicaid will be published separately.

Purpose of the Program
Because of the 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 reimburged 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 did not provide coverage of primary care services to the extent that it covered 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 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 other factors, several rural health 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 problem and the lack of physicians in many rural areas, the Congress, through Pub. L. 95-210, 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; and
2. Services and supplies furnished as an incident to a physician's services; and
3. Services of physician assistants, nurse practitioners, nurse midwives and specialized nurse practitioners; and
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, nurse practitioners and services incident to a physician's services are defined in these regulations in accordance with the long-standing definitions of these terms. As contemplat-

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 1978, 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 midwife, 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 Medicare patients. Any difference between the all-inclusive rate and 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 reimbursement 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 reimbursement 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 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 reimbursement 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. 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 not to 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 by 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:

(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

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

- - - - - -

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

§ 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

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

- - - - - -

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

§ 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.
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 and 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 (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).

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

(iii) "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.

(iv) "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).

(i) 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.

(ii) "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, the survey agency or his delegate to provide rural health services under Medicare. (See §405.2402.)

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

(iv) "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 and 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 (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).

(iii) "Visit" means a face-to-face encounter between a clinic patient and a physician, physician assistant, nurse practitioner, 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.

(iv) "Visiting nurse service" 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 recommendations 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:
(i) Written notice of the determination; and
(ii) 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 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.
(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 may 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 furnished by a 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
(4) They would be covered if furnished by a physician;
(5) 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;
(6) 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 physician; and
(5) Furnished under the direct, personal supervision of a nurse practitioner, physician assistant, nurse midwife, specialized nurse practitioner or a physician;
§ 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 for 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.

(i) If the deductible has been fully incurred by the carrier, in accordance with this subpart and general instructions issued by HCFA.

(2) The report specified in § 405.232(b)(2); and

(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 § 405.2424(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 administration, 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 administrative 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 records.

(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 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.


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


ROBERT A. DERZON,
Administrator, Health Care Financing Administration.


JOSPEH A. CALIFANO, Jr.,
Secretary.

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

**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.

**ADDRESS:** 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.

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.

**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 space-available 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.


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.

**ADDRESS:** 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.

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

**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.

**British Caledonian Airways, Ltd., Dan­
Air Services Ltd., and Condor Flugdienst
GmbH.**
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.” This means a person is “retired” means “no longer gainfully employed as defined by the Board.” (Emphasis 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(c), 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, 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.

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 Board’s proposed definition of “retired” means “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 § 223.3, “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.

(See 204 and 403 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758)

‘These include letters from a number of families who wish to adopt these children and from several of their Senators and Congressman, 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.”

By the Civil Aeronautics Board.

PHYLIS T. KAYLOR, Secretary.

(FR Doc. 78-5482 Filed 2-28-78; 8:45 am)

[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 Administrator 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.

FURTHET INFORMATION CONTACT:


SUPPLEMENTARY INFORMATION:

This proposed regulation has been coordinated with the Office of General Counsel, Department of Defense.


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:
PROPOSED RULES

Subpart 1221.2—The Congressional Space Medal of Honor


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 National Aeronautics and Space Administration, is set forth in Appendix A to this Subpart. Each person awarded the Medal shall also 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

OVERSE Y 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 facing in center 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 brilliance of the fest is represented by a diamond. The eagle raised in star spirit of peace represents man’s first landing on another planet.
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.


FOR FURTHER INFORMATION CONTACT:

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 concerning 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.


ROGER J. FITZPATRICK,
Presiding Officer.

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

PROPOSED RULES

ACTION: Proposed rule.

SUMMARY: The proposed rule is intended to disclose the names of depositary participants to issuers and other qualified parties for the purpose of establishing a point outside the depositary from which the distribution of communications to beneficial shareholders may be initiated. The proposed rule facilitates issuer-shareowner communications by codifying an existing practice of issuers and depositaries and by making depositary 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. ST-737.

FOR FURTHER INFORMATION CONTACT:


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" 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 a list of the persons on whose behalf the depository holds the securities."

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 depositaries.

The proposed rule would formalize this practice and enable certain qualified non-issuers to obtain depositary 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. 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

1SEC, 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 Names of the Beneficial Owners of Such Securities, pursuant to Section 12(m) of the Securities Exchange Act of 1934 (Committee Print 1976) (the "Street Name Study"), 65.

2Under 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 deposited 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.

3Requests from non-issuers for position listings have been received by most depositories of the major clearing firms as "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 acceded to by the party ordering the production of the listing, the request is refused.

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

The proposed rule overcomes that impediment for qualifying non-issuers while protecting the interests of issuers and depositaries. Issuers are concerned that shareholder information be disclosed only to proper parties. The proposed rule (i) limits the nonissuers who may obtain the information without the issuer's 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 law.

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 listing 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 applicable state 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 the presentation of the claim to the clearing agency. In the event that a party certifies his entitlement to a securities position listing pursuant to (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 the 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. ST-737. All comments received will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.


[FR Doc. 78-3339 Filed 2-28-78; 8:45 am]
PROPOSED RULES

ACTIONS: 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.


FOR FURTHER INFORMATION CONTACT:

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 related 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 increases in consumer price increases since the Schedule was last published. Accordingly, § 288.10 is revised as follows:

Sec. 288.10 Schedule of fees and rates.


§ 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:

(i) Training and education

(f) Transcripts

Original copy $2.40

Each additional copy .30

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

(ii) Certificates

Original copy $2.40

Each additional copy .30

(1) Includes all requests for certificates, verification of attendance, and completion report 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) .96

Loan of each X-ray 1.80

Copy of 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 .24

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 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 .50

1st print .50

8 in by 10 in double weight matte finish, 1st print .60

4 in by 5 in color negatives, each .60

2d and 3d prints, each .24

11 in by 14 in double weight matte finish, each .75

16 in by 20 in double weight finish, each .50

35 mm color transparency slide made from color negative material .40

4 in by 5 in color transparencies or color negative, each .80

35 mm duplicate from 35 mm slide .25

8 in by 10 in color transparencies or color negative, each .40

4 in by 5 in black and white negative, each .30

11 in by 14 in color type “C” prints, 1st print .50

2d and 3d prints, each .24

16 in by 20 in color type “C” prints, 1st print .60

16 in by 20 in color type “C” print, mounted in 24 in by 36 in cardboard .60

70 mm color inter Negatives, each .70

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

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Searching, per hour or fraction thereof (including overhead costs) $9.60
First print $1.60
Each additional print of same document $.60


(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 $1.00
Certification and validation with seal, each $3.00

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 (9)-(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 reproduced pages) $2.40
Publication, per printed page $.06
(Examples: Cost of 20 forms, $2.40; 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 $.60

(9) Engineering data (microfilm).

Aperture cards Silver duplicate negative, per card $0.50
When key punched and verified, per card $.60
Diazot 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 $.39
Paper prints (engineering drawings), each $.50
Paper reprints of microfilm indices, each $.86

(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:

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 $.60 per hour).

Minimum charge for office copy reproduction (minimum up to 6 images) $2.40
Each additional image $.60
Certification and validation with seal, each $3.00
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.

[PR Doc. 78-5391 Filed 2-28-78: 8:45 a.m.]

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 review 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.

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PROPOSED RULES

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.


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 such instances, Bureaus and Offices shall be guided by the relocation planning 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

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 proposal 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.


For Further Information Contact:
Mildred B. Nesterak, Broadcast Bureau, 202-322-7792.

Supplementary Information:

Notice of Proposed Rulemaking


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 filed by Max Bungard ("petitioner"), proposing the assignment of Channel 296A to Belpre, Ohio, as a first FM assignment to that community. Petitioner submits that the relocation plans required by §114-50.402 were not 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 City—57,160.

(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., 2,743, and St. Marys, W. Va., approximately 8 kilometers (5 miles) distant, respectively) a preclusion study was made. The study indicates that preclusion would occur only on the co-channel FM assignments. Williamstown, 2,743, and St. Marys, W. Va., approximately 8 kilometers (5 miles) distant, respectively. 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.

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. Petitioner's Notice of the petition was given on November 7, 1977, Report No. 1088.
2. Population figures are taken from the 1970 U.S. Census.

FEDERAL REGISTER, VOL. 43, NO. 41—WEDNESDAY, MARCH 1, 1978
**PROPOSED RULES**

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 in paragraphs 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(l), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.251(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 in § 73.202(d) and § 73.315 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 hours in the Washington D.C. Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

7. †FR Doc. 78-5399 Filed 2-28-78; 8:45 am

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**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**


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, 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—80,000. (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 WLKR-FM in La Crosse.

3. **Economic data.** Petitioner states that the population of Onalaska has increased over the past 10 years, from 3,000 in 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 systems, industry, and 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 280) 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 facility 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 and submit terrain profiles between the proposed site and Onalaska and should show the expected signal levels in the service area.

*Population figures are taken from the 1970 U.S. Census.*

*Although petitioner claims that Onalaska would be encompassed within the 70 kilometer (43.5 miles) distance separation of this operation is lacking, and the effects of shadowing*
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 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.

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

FEDERAL COMMUNICATIONS COMMISSION,
Walter W. Johnson, Chief, Broadcast Bureau.

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), required by paragraph 2 before a channel and are incorporated herein.

PROPOSED RULES

Section 4(i) 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. 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 persons who filed comments to which the reply is directed. Such reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b), and (c) of the Commission Rules.)

3. Comments 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.

4. 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.

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

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FEDERAL COMMUNICATIONS COMMISSION,
Walter W. Johnson, Chief, Broadcast Bureau.

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), required by paragraph 2 before a channel and are incorporated herein.
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 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 the 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.


JOSEPH W. HAAS,

WATER RESOURCES PROJECT TYPE ACTIVITIES
Channel Modification Guidelines


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 protected 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 purposefully 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.


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.
I. INTRODUCTION

A. Purpose

The guidelines for channel modification are promulgated under the authority of the National Environmental Policy Act of 1969 (NEPA), as amended, and 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 distribution. 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 impacts. A comparison of the displays will identify trade-offs between the environmental quality and economic development objectives.

In compliance with the mandates of NEPA and the Water Resources Council's Principles and Standards, the FWS will assist the SCS in developing, evaluating, and recommending 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 criteria:
(1) Consistent with the Water Resources Council's Principles and Standards;
(2) Makes a significant contribution to project objectives; and
(3) Requires no adverse modification to fish and wildlife habitat. Thus, channel modification will normally emerge as the least resort measure.

NOTICES

8277


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

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 programs authorize the provision 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 eco-system 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 eco-system 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 of 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 initial 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 that 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, floods, 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 wildlife populations. Dependent upon the situation, wetlands can serve as: (1) Natural flood detention areas; (2) Sediment and debris traps; (3) Water purifiers for 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 and riparian habitats. 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 management to fish and streams and wetlands are well-suited for and have a long history of agricultural and urban uses.

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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, floodproofing 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 as the clearing, snagging, widening, realignment, and lining, listed generally in order of ascending cost, of fill or downed timber and accumulations of debris or obstructions.

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, pilings, 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 and/or provide drainage. Deepening usually involves clearing or snagging and excavation of a portion of the channel side slopes.

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 excavation of a portion of the channel bottom and the channel side slopes.

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 may be considered an alternative. If it is determined that an alternative is not feasible or is not appropriate, the remaining criteria will be evaluated in order to determine if 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 or for which the SCS may be requested to provide assistance under the Forest and Rangeland Resources Planning Act of 1976 and the Forest and Rangeland Resources Management Act of 1976. The SCS may also involve State fish and wildlife agencies in the planning process for determining when channel modification may be appropriate.

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. FWS will review and approve or disapprove the plan on the basis of channel modifications and other actions recommended by the SCS and the States. FWS will so notify the SCS in writing stating reasons for its action. If FWS determines that it cannot, for any reason, participate, it will so notify the SCS in writing stating reasons for its inaction. If 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 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.

The following procedures will be used in the planning of water resource projects. The coordination identified is between the SCS, FWS, and developed jointly with SCS.)
**NOTICES**

**COORDINATION OF FIELD LEVEL PLANNING**

<table>
<thead>
<tr>
<th>Process</th>
<th>SCS action</th>
<th>FWS action</th>
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<tbody>
<tr>
<td>Preapplication</td>
<td>Potential application under consideration. Notifies FWS that potential</td>
<td>Participates in meetings.</td>
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<td>application is being considered and issued invitation to meetings.</td>
<td>Furnishes available information and FWS viewpoint concerning potential for and</td>
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<td>Assists sponsors in developing information when appropriate. (Normally</td>
<td>impacts of a probable project. If requested, participates jointly with SCS</td>
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<td>requires from one to several days.) Request from FWS available fish and</td>
<td>and State fish and wildlife studies needed and report findings as may be</td>
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<td>wildlife information and viewpoints concerning potential for and impacts</td>
<td>required. (Field level letter.)</td>
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<td>of a probable project.</td>
<td>Participates in meetings.</td>
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<tr>
<td>Application</td>
<td>Receives application. Notifies FWS in writing that application has been</td>
<td>Participates in field examination. Assemblies and furnishes available fish</td>
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<td>received and when field examination is to begin. Issues invitation to FWS</td>
<td>and wildlife information and data. Participates in study and evaluation of</td>
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<td>to participate in all meetings and in study and evaluation of available</td>
<td>available information and data and in identification of problems and study</td>
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<td>information. (Field examination may require a few days to several weeks.)</td>
<td>needs and potential solutions worthy of further study.</td>
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<td></td>
<td>Initiates field examination and assemblies available information, coordinates</td>
<td>Works cooperatively with SCS and State fish and wildlife agency in any special</td>
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<td>study and evaluation of available information and data. Begins environ-</td>
<td>studies required and in preparing an appropriate report.</td>
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<td>mental assessment.</td>
<td>Provides inputs (letter report) for the field examination report.</td>
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<td></td>
<td>Identifies problems and needs, potential solutions, and broad alternatives</td>
<td>Participates with SCS in developing a plan of study. FWS will advise as to</td>
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<td>worthy of further study. Request FWS to work cooperatively with SCS and</td>
<td>scope and detail of specific studies needed, capability of FWS to perform</td>
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<td>State fish and wildlife agency in any special studies required in this</td>
<td>studies, and its desire to participate in design of any contracts to secure</td>
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<td>step.</td>
<td>necessary information.</td>
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<td>Prepares field examination report (includes pertinent fish and wildlife</td>
<td>Participates in meetings and preparation of joint FWS-State fish and wildlife</td>
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<td>information from FWS) and provides copy to FWS.</td>
<td>agency-SCS fish and wildlife inventory, assessment, baseline data, and report.</td>
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<td>Requests FWS to participate in developing a plan of study. Prepares the</td>
<td>Furnishes additional inputs to problems, needs, alternatives and impacts as</td>
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<td>study plan.</td>
<td>the PI process progresses and jointly makes recommendations for mitigation,</td>
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<td>compensation, and enhancement. Furnishes inputs for the PI report and</td>
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<td>Requests planning authority (submits views of FWS with request for planning</td>
<td>updating of study plan.</td>
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<td>authorization).</td>
<td>Participates with SCS to review the PI report with the public.</td>
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<td>Participates with SCS and others in detailed planning of alternatives and the</td>
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<td>works cooperatively with State fish and wildlife agency and SCS to formulate</td>
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<td>the alternatives and to assess fish and wildlife impacts. Works cooperatively</td>
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<td>with SCS and State in preparation of recommendations for mitigation,</td>
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<td>compensation, and enhancement for initial draft plan and, when prepared, an</td>
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<td>EIS. Participates in meetings. Provides detailed report in accordance with Fish</td>
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<td>and Wildlife Coordination Act and section 12 of Pub. L. 92-566.</td>
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<td>Provides review comments on initial draft and participates in local field</td>
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<td>review.</td>
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<td>Provides comments to Interior and works with SCS in an attempt to resolve</td>
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<td>issues, if warranted.</td>
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<td>Review plan and EIS according to FWS and Interior instructions.</td>
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<td>Reviews pertinent construction plans.</td>
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<td>Participates in formulating supplemental plan when the channel modification</td>
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<td>guidelines are applicable. Same involvement as in planning and provides</td>
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<td>inputs plan for supplemental plan. Also provides comments on supplemental</td>
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<td>plan when circulated for local field review.</td>
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1. 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.

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.

**FEDERAL REGISTER, VOL. 43, NO. 41—WEDNESDAY, MARCH 1, 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 22288 into the need for the continuation of REA as an exclusive express agent of the airlines. 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. 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 22288 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. 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. 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.

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 22288; 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,*
Secretary.

{FR Doc. 78-5394 Filed 2-28-78; 8:45 am}

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 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.

| [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.

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2. All Members concurred.

3. 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.
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. Additional pieces of baggage tendered beyond the two excess pieces will be assessed charges ranging between 300 and 400 percent 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 constraints, it has unable to board all the baggage tendered; the proposal is a relatively irrestrictive response made essential by some passengers abusing baggage privileges by tendering twenty, thirty or more pieces, which preclude other passengers or freight shippers from using Pan American’s service; the movement of large numbers of pieces at rates considerably below regular freight rates gives the tenderer an unfair preference over other shippers and dilutes the economic support for the operator; 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 simplicity 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 baggage rates at levels that will discourage the use of the baggage 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 and constitute an antitrust violation; the board concludes that it should be suspended pending investigation.

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.

*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.

*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 64 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); 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. 20424, 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, 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, Inc., 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, Secretary.

APPENDIX A—TARIFF CAB No. 55, ISSUED BY AIR TARIFF CORP., AGENT.

On 27th Revised Page 46-A—

1. The parenthetical expression "(Not applicable to PAY)" in Rule No. 16(V)(k)(o) is deleted.

2. The Exception to subparagraphs (a), (b), and (d) of Rule No. 16(V)(k) and the Exception to that Exception.

[FEDERAL REGISTER, VOL. 43, NO. 41—WEDNESDAY, MARCH 1, 1978]

NOTICES

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric 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 Ad-

ministrator 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 2,600 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 per 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 per 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 per 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 120 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


Winfred H. Meidhaim, Associate Director, National Marine Fisheries Service.

COD FISHERY

Closure of the Directed Commercial Fishery for Cod in the Gulf of Maine

Notice is hereby given pursuant to 50 CFR 651.8(a)(2) (See Federal Register, December 30, 1977, page 65187) for the commercial fishery for cod in the Gulf of Maine.

This order was submitted to the President on February 14, 1978.

All Members concurred.

[FEDERAL REGISTER, VOL. 43, NO. 41—WEDNESDAY, MARCH 1, 1978]
ister, December 30, 1977, page 65187 and Federal Register, January 4, 1978, page 778) that the Assistant Ad-
im. Proctor for Fisheries has deter-
mined that 50% of the quarterly allo-
cation of 1,250 metric tons of cod (see Federal Register, December 30, 1977, page 65187) for the commercial fish-
ery 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 quar-
terly allocation have been taken in the Gulf of Maine. Therefore, the season for taking cod in a directed commer-
cial fishery in 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 of any size: using fixed gear (hooks or gillnets) 16,000 pounds of cod or 10 percent by weight of all other fish on board. (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 de-
ducted for steaming time. For exam-
ple, 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 time 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.


WINFRED H. MEIBOM, Associate Director, National Marine Fisheries Service.

[FR Doc. 78-5422 Filed 2-28-78; 8:45 am]

NEW ENGLAND GROUND FISH 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 gear 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 Regis-
ster on December 30, 1977, at page 65186 and repromulgated in the Fed-
eral 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°19' 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 bottom fish; 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.


WINFRED H. MEIBOM, Associate Director, National Marine Fisheries Service.

[FR Doc. 78-5422 Filed 2-28-78; 8:45 am]

MARINE MAMMALS PERMIT

Receipt of Application

Notice is hereby given that an Appli-
cant has applied in due form for a Per-
mit to take marine mammals as au-
thorized by the Marine Mammal Pro-
tection 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. Demetrios, 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: Copano 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 arrange-
ments 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 applica-
tion should be submitted to the Assis-
tant Administrator for Fisheries, Na-
tional Marine Fisheries Service, De-
partment of Commerce, Washington, D.C. 20235, within 30 days of the pub-
lication of this notice. Those individ-
uals requesting a hearing should set forth the specific reasons why a hear-
ing 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 con-
tained in this application are summar-
ies 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 avail-
able for review in the following offices:

Assistant Administrator for Fisheries, Na-
tional Marine Fisheries Service, 3300 White-
tehaven Street NW, Washington, D.C.; Regional Director, National Marine Fisher-
ies Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Pe-
tersburg, Fla. 33702; and Regional Direc-
tor, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, Calif. 90731.


ROLAND FINCH, Acting Assistant Director for Fisheries Management, Na-
tional Marine Fisheries Service.

[FR Doc. 78-5310 Filed 2-28-78; 8:45 am]

SURF CLAM FISHING DAY DESIGNATION AND CHANGE

Public Hearings on Administrative Proceedings

AGENCY: National Oceanic and At-
mospheric Administration, Commerce.
ACTION: Announcement of Public
hearings.

SUMMARY: These 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 permit. A number of comments were received prior to the final surf clam 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 remains 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.


WINTFRED H. MELBOHM, Associate Director, National Marine Fisheries Service.

[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, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased 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.


[FR Doc. 78-5423 Filed 2-28-78; 8:45 am]

[3910-01] DEPARTMENT OF DEFENSE

COMMUNITY COLLEGE OF THE AIR FORCE (CCAF) ADVISORY COMMITTEE

Meeting


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.
NOTICES

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 held at 9:30 a.m., March 28, 1978, at the Holiday Inn Airport, 1380 Virginia Avenue, Atlanta, Ga. 30341.

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-

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

[FR Doc. 78-5297 Filed 2-28-78; 8:45 am]
cEDURE for public participation in the development of marketing policies. The proposed procedure is set forth below.


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 substantially affected by SEPA's determination of marketing policies, 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 shall 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 otherwise dispose of, or acquire 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 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.

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 new or revised marketing policy. Notice shall be given in accordance with the Freedom of Information Act, 5 U.S.C. 552.

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 the subject of the proposed marketing policy. Notice to be given in advance of any such forum shall include the purpose, date, time, location and procedures for any such forum.

The Administrator shall act as or appoint a forum chairman. Questions raised at the forum shall be answered in writing by SEPA representatives and others who so desire may submit written answers. 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.

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 give notice of the forum to 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 5 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 will be permitted 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 during the consultation and comment period. SEPA shall prepare a staff evaluation.

8. Revisited 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 hearing 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.

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 on a later date specified by the Administrator.

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.

Federal Energy Regulatory Commission
[FR Doc. 78-5313 Filed 2-28-78; 8:45 am]

ALABAMA POWER CO.
Notice of Compliance Filing

Take notice that Alabama Power Co. on February 9, 1978, tendered for filing revised cost of service schedules and amendments to Rate Schedule F.E.R.C. No. 235-1 for an effective date of March 1, 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 the Federal Energy Regulatory 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. Copies of this filing are on file with the Commission and are available for public inspection.

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. Protest 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.

BOSTON EDISON CO.
Notice of Filing

Take notice that Boston Edison Co. on February 10, 1978, tendered for filing revised cost of service schedules and amendments to Rate Schedule S-2 prepared in accordance with opinion Nos. 809 and 809-A of the Commission.

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.

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 contract 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 1, 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
NOTICES

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 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]

[FR Doc. ER78-5581]

IOWA POWER & LIGHT CO.
Notice of Compliance Filing


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 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]

[FR Doc. ER78-206]

MISSISSIPPI POWER & LIGHT CO.
Notice of Proposed Agreement


Take notice that the 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. 78-5360 Filed 2-28-78; 8:45 am)

[6740-02]

[FR Doc. ER78-813]

JERSEY CENTRAL POWER & LIGHT CO.
Notice of Filing


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 re-funded 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 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]

[FR Doc. ER78-211]

MOUNT CARMEL PUBLIC UTILITY CO.
Notice of Presiding Judge’s Certification of Settlement Agreement to the Commission


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 Alliance, 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]

NORTHWEST PIPELINE CORP. Amendment to Application

[6740-02] (Docket No. CP78-119)


Take notice that on February 15, 1978, Northwest Pipeline Corp. (Applicant) P.O. Box 1528, 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 approximating the Creston Nose Area and deliver such volumes of natural gas so delivered to CIG for exchange by displacement.

The application states that after becoming 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 thereafter 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 77-81, 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 77-81 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. CP77-81. It is stated that Western, on or about December 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 CP77-81 moot. Applicant indicates that Western would submit to the Commission a petition requesting the withdrawal of the complaint filed in Docket No. CP77-81, 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 cost-west portion of Trunk A as reflected in Figure 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 eastern portion of Peabody. 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 facilities of Western and CIG in Sweetwater County, Wyo. The volumes of natural gas so delivered to CIG in accordance with the terms of the agreements, if adopted by the Commission, would be delivered to CIG for Applicant's account 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 agreement 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.
NOTICES

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]

(Pennsylvania-New Jersey-Maryland Interconnection
Notice of Proposed Revised Schedule


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 supply 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. 20426, in accordance with sections 1.6 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]

(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 in application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its Bayou Mangoulois Gas Lift and Re-delivery Meter Station, which are located on its 20-inch south section 28 line traversing Lake Mangoulois 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 lifted gas transported in the field for Texaco Inc. (Texaco) across Bayou Mangoulois. 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 file 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 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]

(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., Washington.
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[6740-02] [Docket No. CP78-191]

TRUNKLINE GAS CO.

Application


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 18 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 protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 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 protesters 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 section 7(e) of the Natural Gas Act, the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protesters 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. 78-5369 Filed 2-28-78; 8:45 am]
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an existing 378-foot-long concrete dam which is primarily 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 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 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. 95-61, 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 100.50, as amended, provided that this proceeding would be continued before the FERC. FERC takes action in this proceeding in accordance with the above mentioned authorities.

KENNETH F. PLUMB,
Secretary.

[PR Doc. 78-5368 Filed 2-28-78; 8:45 am]

[6560.01]

ENVIROMENTAL PROTECTION AGENCY

(FRL-861-3; 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 Monday, March 13, and Tuesday, March 14, 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-556), Room 803, Crystal Mall, Building 2, 1921 Jefferson Davis Highway, Alexandria, Va., telephone 703-587-7560.

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 IV);

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.


EDWIN L. JOHNSON,
Deputy Assistant Administrator
for Pesticide Programs.

[PR Doc. 78-5424 Filed 2-28-78; 8:45 am]

[6560-01]

MONSANTO CO.

Issue 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-54, 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

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FEDERAL REGISTER, VOL. 43, NO. 41—WEDNESDAY, MARCH 1, 1978

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 shall 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.


DOUGLAS D. CAMPT, Acting Director, Registration Division.

APPLICATIONS RECEIVED

EPA File Symbol 279-GNRG. FMC Corp., Agricultural Chemical Division, 2000 Market Street, Philadelphia, Pa. 19103. Pounce Technical, Active Ingredient: Permethrin, (3-phenoxypyphenyl) methyl (±) cis • trans • 3 -(2,2-dichloroethyl)-2,2-dimethyl cyclopropane carboxylate 38.4 per cent. Application proposes that this product be classified as an insecticide for treating cotton. (Dated: February 21, 1978.)

DOUGLAS D. CAMPT, Acting Director, Registration Division.

APPLICATIONS RECEIVED

EPA File Symbol 279-GNRU. FMC Corp., Agricultural Chemical Division, 2000 Market Street, Philadelphia, Pa. 19103. Pounce 3.2 EC, Active Ingredient: Permethrin, (3-phenoxypyphenyl) methyl (±) cis • trans • 3 -(2,2-dichloroethyl)-2,2-dimethyl cyclopropane carboxylate 38.4 per cent. Application proposes that this product be classified as an insecticide for treating cotton. (Dated: February 21, 1978.)

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DOUGLAS D. CAMPT, Acting Director, Registration Division.

APPLICATIONS RECEIVED

EPA File Symbol 35890-R. Atlantic and Pacific Research Inc., P.O. Box 14366, North
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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 review 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 State of South Carolina shall be effective upon signature of this notice.

Accordingly, this approval shall become effective immediately.


JOHN A. LITTLE,
Deputy Regional Administrator,
Region IV.

FEDERAL COMMUNICATIONS COMMISSION

COMMON CARRIER SERVICES INFORMATION
International and Satellite Radio Applications Accepted for Filing

BY THE CHIEF, COMMON CARRIER BUREAU.


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 that 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.

SATCHEL COMMUNICATIONS SERVICES

MD, 297-CSG-R-78 Communications Satellite Corp. (WAC7), Clarksburg, MD. Renewal of Station License (Developmental) from February 15, 1978 to February 15, 1979.

AL, 313-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. 90°57'45" 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., Mankato, MN. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 44°10'34" N., Long. 93°57'45" W. Rec. Freq. 3700-4200MHz. Emission 36000F9, with a 5-meter antenna.

MI, 315-DSE-P/L-78 Gertty Broadcasting Co., Essexville, MI. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 43°26'53" W., Long. 87°05'27" W. Rec. Freq. 3700-4200MHz. Emission 36000F9, with a 4.5-meter antenna.

FL, 316-DSE-M/L-78 North Lauderdale Cablevision, Inc. (WESG), 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. 29°57'16" N., Long. 97°30'58" W. Rec. Freq. 3700-4200MHz. Emission 36000F9, with a 4-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°08'16" N., Long. 97°27'29" 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°10'56" 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 Co., Raymondville, TX. Authority to construct, own, and operate a Domestic Communications Satellite Receive-Only Earth Station at this location. Lat. 26°29'42" N., Long. 97°47'10" W. Rec. Freq. 3700-4200MHz. Emission 36000F9, with a 4.5-meter antenna.

CA, 324-DSE-P/L-78 Simons 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 Mokenegon 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°09'43" N., Long. 88°59'45" 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.
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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 IA-4, as reissued at FR 29992-4; 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 impracticability 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. (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); and subsequent SAS releases promulgated periodically by the AICPA.

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 operate, 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.

1. APPLICABLE AUDITING STANDARDS

As a minimum, internal auditors must use generally accepted auditing standards. The internal auditor should 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); 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 audit 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 regulations, the circumstances should be discussed with the District Director-Examina-
tions as soon as the audit work which dis-
closed the situation is completed.

Nothing in this Bulletin shall be con-
structed 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 re-
ports.

Any of the procedures referred to herein with respect to the review of internal controls or audit procedures are fully applica-
able to savings and service corporations' full automated equipment. The internal auditor shall be familiar with appropriate publica-
tions 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 institu-
tion 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 meeting at which a resolution providing for the following was adopted:

1. That the internal audit shall be per-
formed to the satisfaction of the District Di-
gerations. The internal auditor has the respon-
sibility to review and evaluate the adequacy of the institution's system of internal con-
trol in establishing the scope of his audit tests. Prior to any review, the internal audit-
ator should be familiar with the chapters on internal control contained in the "Auditors Manual for Savings Institutions" published by the FMS.

At this time, the FHLBB has not attempt-
ted to devise a list of internal con-
trols which should be adopted by all savings and loan institutions and their subsidiaries. It is the responsibility of the internal audi-
tor to develop a control questionnaire as part of his review of the in-
ternal controls.

In conjunction with and in the rendering of the annual report (see Part V of this Bul-
etin), the internal auditor shall disclose any material weaknesses in the institution's system of internal controls and shall include recommendations as to the steps to be taken to devise a standard list of internal con-
trols in the areas of such weaknesses, to-
gether with corrective actions taken by the institution's management or operating per-
sonnel.

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 state-
ments regarding controls in existence. The auditor should determine through observa-
tion, direct correspondence, the extent to which such controls are operative. Workpapers must indicate the methodology and the re-

tults of the tests. Any deficiencies noted by the auditor shall be reported to manage-
tment 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 de-
signated nor intended to supplant the internal audi-
tor's judgment): Cash—Cash balances (on hand and in banks); Cash receipts (in-
cluding payments on loans, deposits and in-
vestments); Confirmation payments including withdrawals, lending, and expenses; Con-
signments (travelers checks, savings bonds, etc.); Marketable securities and other investments. Loans—Lending policies and procedures; Documents: Delinquencies; In-
terest income and accrual computations; Un-
ique controls required by specific types of loans (Real estate owned (covering for in-
vestment and/or through foreclosure or in lieu thereof). Property, Other assets and de-
ferred charges. Savings accounts—Inactive accounts maintained by the institution; Liquid-
sation; 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 ac-
ccounts. The audit must include satisfactory workpaper documentation of loans and accounts by direct corresp odence. The internal audi-
tor shall determine the extent of confirmations that in the auditor's judgment is neces-
sary. The internal auditor shall clearly 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 work-
papers 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 ma-
terial exceptions to confirmation requests that are not satisfactorily resolved.

E. Inspection of loan documents. The in-
ternal auditor has the responsibility to de-
terminate the extent of audit tests to be performed on loans and participa-
tions sold or purchased. The internal auditors shall also disclose the basis used to select loan accounts for documents inspection and the specific docu-
ments 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 ma-
terial exceptions noted in the loan documents examined that are not satisfactorily resolved.

F. Loans and participations sold or pur-
chased. The internal auditor has the respon-
sibility to determine the extent of audit tests to be performed on loans and partici-
pations sold or purchased. The internal auditor has the responsi-
ability to determine the extent of audit tests for documents inspection and the specific docu-
ments 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 ma-
terial exceptions noted in the loan documents examined that are not satisfactorily resolved.

The internal auditor shall clearly disclose the basis used to select accounts for confirma-
tions and the results thereof. If statistical sampling is used as the basis for selecting accounts, the work-
papers shall clearly indicate the extent of audit procedures performed and conclusions reached.

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 ma-
terial exceptions noted in the loan documents examined that are not satisfactorily resolved.

For loans or participations purchased, the internal auditor's workpapers shall clearly disclose the basis used to select accounts for confirmations and the results thereof. If statistical sampling is used as the basis for selecting accounts, the work-
papers shall clearly indicate the extent of audit procedures performed and conclusions reached.

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 ma-
terial exceptions noted in the loan documents examined that are not satisfactorily resolved.

For loans or participations purchased, the internal auditor shall provide evidence of val-
uation allowances. Particular care should be exer-
cised in determining the need for and the ade-
quacy of valuation allowances. The internal auditor shall be able to provide for obtaining appraisals by independent, profes-
FEDERAL REGISTER, VOL. 43, NO. 41—WEDNESDAY, MARCH 1, 1978
sional appraisers. The internal auditor shall discuss with the District Director-Examinations any proposed independent appraisal procedure 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 analysis of the scope and results of the work accomplished, along with the internal auditor's findings as requested by the appropriate conference, and the corrective actions taken by the institution.

The annual report must contain a summary of all matters of material substance contained in the institution's board of directors (or audit committee) since the preceding annual report.

The annual report shall contain a statement that the internal auditor has reviewed all annual and semiannual reports submitted to the Federal Home Loan Bank Board by the insured institution or subsidiaries 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 Office, to any other special or supplemental reports related to the audit or the report thereof, 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 thereof 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 following such termination. Such notification must indicate the reason for the termination and 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 his findings and report to the subcommittee of the board of directors 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.


By the Federal Home Loan Bank Board.

RONALD A. SNIDER, Assistant Secretary.

[FR Doc. 78-5382 Filed 2-28-78; 8:45 am 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 Inc. 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 all the rights and liabilities under the respective approved section 315 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

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Terminal agreements

T-2901 T-2903 T-2901


FRANCIS C. HURNEY, Secretary.

[FR Doc. 78-5295 Filed 2-28-78; 8:45 am am]

[6730-01]

(Independent Ocean Freight Forwarder License No. 1490R)

AVERY & TAYLOR IMPORT-EXPORT SERVICES, INC.

Order of Revocation


By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 742, and Section 5.01(c), dated August 8, 1977, "It is ordered, That Independent Ocean Freight Forwarder License No. 1490R 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.
NOTICES

[...]

Certificate No. 12005.
Owner/operator and vessels: Compañía General D’Armementes Marítimos Alpha Mariner.

12048. Monkey Island: Alacran.

12167. Map Tankers Inc.: Uniform Derek.

12168. Chesterton Corp.: Merghan V.


12174. A.B. Sonora: Amarin.

12175. London: Charlotte S.


12177. Maribampl Co Parisiana Nava S.A. of Panama: Raphaelita.

12178. Seafall Shipping Corp.: Alós.

12179. Winston Corp.: Wistron.


12186. Culfan Singapore Private Ltd.: Cufan, Jasper Cleussen.


12188. Orange Field Steamasial Co Inc.: Mari Gold.


12192. Al Atim: Al Atim.

12193. Southern Metals Shipping Ltd.: Diamond.

12194. Stella Corp.: Cortinablacks.

12195. Onroy Dredge and Derrick Co Inc.: Felucca.

12196. Greenwich Foundation:Save the Whales: Ohana Kiti.


12199. Keplion International Inc.: Kanku Forest.

12200. Canal Freight Lines Inc.: CC 206, CC 207, CC 211.

12201. Transocean Carriers Corp. of Liberia: MESSINARI AKTIVA.


12203. Acelian Beach Marine Inc.: EUROUSIN.

12207. K/S Merc Scandia XV: MERCANDIAN STAR.


12209. Transocean Shipping Co S.A. Panama: Antigue.

12211. La Sabanas Shipping Co S.A.: Ocean Lead.

12233. Rederi North Pole N.V.: North Pole, South Pole.

12235. Blue Jay: ROBERT L. TED R.

12236. Mrs. C.J. Dammers: Jun Willem.


12238. Readyer Co Cari: M.S. Planet Henry Gerdu KG (O.m.b.h. & Co.) Plan.

12239. Stolt Nornes Inc.: Stolt Nornes.

12241. Aegon Sky Inc.: Blue Pearl.


12246. Norwegian General Co: Vangtun.


12248. Westfield Shipping Co Ltd.: Thomasfield.

12249. South Continental Tanker Corp., Inc.: Transud II.

12250. Norfolk Shipping Co Ltd.: Eastern Moon.


12251. Madsen Shipping Corp.: Henrik I.

12252. Syntagma Shipping Co S.A.: Ioanne F.


12254. Piers Maritime Inc.: Starship Progress.

12255. Brittas Bay Shipping Co Ltd.: Silverplate.


Certificate No. 12006.
Owner/operator and vessels: Compañía General D’Armementes Marítimos Alpha Mariner.

12048. Monkey Island: Alacran.

12167. Map Tankers Inc.: Uniform Derek.

12168. Chesterton Corp.: Merghan V.


12174. A.B. Sonora: Amarin.

12175. London: Charlotte S.


12177. Maribampl Co Parisiana Nava S.A. of Panama: Raphaelita.

12178. Seafall Shipping Corp.: Alós.

12179. Winston Corp.: Wistron.


12186. Culfan Singapore Private Ltd.: Cufan, Jasper Cleussen.


12188. Orange Field Steamasial Co Inc.: Mari Gold.


12192. Al Atim: Al Atim.

12193. Southern Metals Shipping Ltd.: Diamond.

12194. Stella Corp.: Cortinablacks.

12195. Onroy Dredge and Derrick Co Inc.: Felucca.

12196. Greenwich Foundation:Save the Whales: Ohana Kiti.


12199. Keplion International Inc.: Kanku Forest.

12200. Canal Freight Lines Inc.: CC 206, CC 207, CC 211.

12201. Transocean Carriers Corp. of Liberia: MESSINARI AKTIVA.


12203. Acelian Beach Marine Inc.: EUROUSIN.

12207. K/S Merc Scandia XV: MERCANDIAN STAR.


12209. Transocean Shipping Co S.A. Panama: Antigue.

12211. La Sabanas Shipping Co S.A.: Ocean Lead.

12233. Rederi North Pole N.V.: North Pole, South Pole.

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</table>

**NOTICES**

**By the Commission.**

FRANCIS C. HURNEY, Secretary.

[FR Doc. 78-5294 Filed 2-27-78; 8:45 am]

The ticket 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 6, 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 a copy of this Order be published in the Federal Register.
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, 202-275-3832.

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 subsequently 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]

[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 were received 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 sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

[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 who have already filed applications pursuant to that notice will be permitted (but are not required) to review, revise, and resubmit 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. Grants under section 706(b) of the Act to public or private nonprofit organizations other than local educational agencies; 2. Bilingual Project grants under section 706(c) of the Act; 3. Special Project grants under section 706(a) of the Act to assist in implementing nonrequired plans described in section 706(a)(3)(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 706(b) of the Act to public or private nonprofit organizations other than local educational agencies; 2. Bilingual Project grants under section 706(c) of the Act; 3. Special Project grants under section 706(a) of the Act to the central public education agency in Puerto Rico, the Virgin Islands, the Trust Territories of the Pacific Islands; 4. Special Arts Project grants under section 706(a) of the Act to public agencies other than local educational agencies; and 5. Special Mathematics Project grants under section 706(a)(3) of the Act to private nonprofit agencies; and 6. Special Student Concerns Project grants under section 706(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.
NOTICES

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: 13.528K (for Special Projects in section 708(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-stamp or date recorded in the official 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 5973, Regional Office Building Three, 7th and D Streets S.W., 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. 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, 1978, but in no case for more than a 12-month period.


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 Part 100, 100a and appendixes) except to the extent that these regulations are inconsistent with 45 CFR Part 185.

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.

DONNA E. SHALALA, Assistant Secretary for Policy Development and Research.

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, February 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

Mary Ann Eichenberger, 202-755-6230.

DONNA E. SHALALA, Assistant Secretary for Policy Development and Research.

[FPR Doc. 78-5506 Filed 2-28-78; 8:45 am]

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 TC(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, WITDO, Washington, D.C. 20240.

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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.


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 TC/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 2-1844. 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.


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 TC/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.


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 TC/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.


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: 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 pheasants listed in 50 CFR Section 17.11 as TC/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.


DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-5330 Filed 2-28-78; 8:45 am]
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.


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 2-2183. 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.


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: 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.


DONALD G. DONAHOO, Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 78-5331 Filed 2-28-78; 8:45 am]
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 continuance 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.


GARY J. WICKS,
Deputy Assistant Secretary of the Interior.

[FR Doc. 78-5886 Filed 2-28-78; 8:45 am]

NOTICES

I. DEFINITIONS

The terms in quotations below shall be defined as shown for purposes of interpreting this order:

"Respondent" shall refer to all respondents listed below, their successors and assigns:

Ataka & Co., Ltd.
Bruzimel Industries Corp.
Hawana 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.


"Stainless steel" refers to any alloy of steel which contains less than one percent of chromium.

"Welded stainless steel pipe and tube" refers to all welding 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.

"Producer" 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 or 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 becomes final. Subsequent reports shall be filed annually within 120 days of the date this order becomes final. Subsequent reports shall be filed annually.

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.

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;

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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 of the Tariff Act of 1930, as amended (19 U.S.C. 1337).

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. DISMISSEALS

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.


By order of the Secretary.

KENNETH R. MASON,
Secretary.

(F.R. Doc. 78-5305 Filed 2-28-78; 8:45 am)

[7020-02]

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.


MYRON R. RENICK,
Chief Administrative Law Judge.

(FR Doc. 78-5314 Filed 2-28-78; 8:45 am)

[7020-02]

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.


MYRON R. RENICK,
Chief Administrative Law Judge.

(FR Doc. 78-5415 Filed 2-28-78; 8:45 am)

[7020-02]

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 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.


MYRON R. RENICK,
Chief Administrative Law Judge.

(FR Doc. 78-5416 Filed 2-28-78; 8:45 am)
The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.


MYRON R. RENICK,
Chief Administrative Law Judge.
[FR Doc. 78-5414 Filed 2-28-78; 8:45 am]

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[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.


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 International Trade Commission, in Washington, D.C., not later than noon, Monday, March 13, 1978.

Notice of the investigation and hearing was published in the Federal Register of February 9, 1978 (43 FR 5593).


By order of the Commission.

KENNETH R. MASON,
Secretary.
[FR Doc. 78-5413 Filed 2-28-78; 8:45 am]

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### 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. 2996-2996l, 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 EHRLLICH,**
**President.**

(FR Doc. 78-5301 Filed 2-28-78; 8:45 am)

#### 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. 2996-2996l, 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 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 EHRLLICH,**
**President.**

(FR Doc. 78-5303 Filed 2-28-78; 8:45 am)

### Nuclear Regulatory Commission

#### Notice of Availability of Draft Supplement to the Final Environmental Statement

**March 1, 1978.**

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 referral and subsequent rescheduling of Unit No. 1 and the cancellation of Unit No. 2 of the initially proposed project.

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**FR Doc. 78-5302 Filed 2-27-78; 8:45 am**

Legal Services Corporation, Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Ill.

**THOMAS EHRLLICH,**
**President.**

(FR Doc. 78-5302 Filed 2-27-78; 8:45 am)

**FR Doc. 78-5303 Filed 2-28-78; 8:45 am**

Legal Services Corporation, Denver Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Ill.

**THOMAS EHRLLICH,**
**President.**

(FR Doc. 78-5303 Filed 2-28-78; 8:45 am)
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 Final Environmental Impact Statement 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 Chairman, Environmental Projects Branch, No. 1, Division of Site Safety and Environmental Analysis.

[FR Doc. 78-4538 Filed 2-21-78; 8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on 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; 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. 20508, 202-385-4529, or from the reviewer listed.

NEW FORMS

NATIONAL SCIENCE FOUNDATION


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, economies and general government division, Reese B.P., 395-3451.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE


DEPARTMENT OF COMMERCE


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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 for 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) therein-after collectively referred to as the applicant, 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 applicant and the adviser from 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 of which 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 of such investment company is an officer, director, investment adviser, or employee of 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 in municipal securities and other types of securities. Through its municipal securities division the adviser participates as an underwriter in a substantial number of public offerings of municipally issued securities.

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 agreement with a principal underwriter of which 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 of such investment company is an officer, director, investment adviser, or employee of the Fund, any security of which is an underwritten offering of corporate equity or debt securities, whereas they intend to invest primarily in municipal bonds.

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, through their principal underwriter, 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 underwritings 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 amended 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' contentions, as stated in their application, that due to the special nature of the municipal bond market and its emphasis on dus-
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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; and

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 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 Fund) that would otherwise be prohibited by section 17 of the Investment Company Act of 1940.

(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 of such board of directors (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 that such 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.

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) of the Investment Company Act of 1940; the Fund having undertaken to take such steps as may be necessary to implement any such recapture, in accordance with the rules and regulations thereunder of 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.

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. Any request for a hearing or notification as to hearing shall be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of

FEDERAL REGISTER, VOL. 43, NO. 41—WEDNESDAY, MARCH 1, 1978
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, pursuant 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. 78-5342 Filed 2-28-78; 8:45 am)

[8010-01]

[Release No. 20418; 70-6119]

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(e)(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

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 the Commission pursuant to this 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 of principal amount of its first and refunding mortgage 5 percent bonds, series EE, due March 1, 2008. The interest rate, which shall be a multiple of 1/6 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 $85,500,000 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 transaction will be filed with the Commission. 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 Commission at and 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.
NOTICES

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.

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 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 any or all substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed to: 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. 78-534 Filed 2-28-78; 8:45 am]

NOTICES


Notice is hereby given that Massachusetts Mutual Life Insurance Co. 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 21, 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 of a $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 15(d) of the Act and Rule 17d-1 thereunder permitting the Insurance Company and the Fund to invest, 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, 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 the second closing occurring sometime in 1978.

Applicants assert that the Insurance Company, which is the investment advisor 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 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 the Notes, such securities 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 purposes any Notes from the Fund investment concurring in the purchase. 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 and of the stockholders of the limited persons of the Insurance Company.

Second, Applicants propose ("Second Proposal") that the Insurance Company and the Fund invest 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 second closing is made, 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 7 1/4% Senior Note due 1983 of Beverages, Inc., a wholly-owned subsidiary of MEI, in the outstanding principal amount of
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 therefor. 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 any 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 Insurance Company would not be able to sell such Notes in the market. 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. 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 to consider the proposed transaction as 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, 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 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 directed to the 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.

[PR 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


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 28, 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 of the Notes 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 be held 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:

1. 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 propose 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.

2. Should the Commission order sought herein issue subsequent to the Later Closing, Applicants represent that, pending receipt of such an order, 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 total assets in 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 impractical 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 Notes instead of (for instance) the insurance company any securities.
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 over-reaching 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 not involve over-reaching 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 to: 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 a statement) 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 thereupon 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.

[FED 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


Notice is hereby given 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 ("TTIC/IRA/RDC"); Title Insurance and Trust Co., Trustee for the Employees Retirement Plan of Consolidated Electrical Distributors, Inc. ("TTIC/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") 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 of "Hughes". Each Buyer currently owns a number of shares of Hughes common stock indicated in the following table and each intends to purchase a specified number of shares of Hughes common stock indicated in the following table:

<table>
<thead>
<tr>
<th>Buyer</th>
<th>Number of shares sold</th>
<th>Number of shares purchasing</th>
</tr>
</thead>
<tbody>
<tr>
<td>TTIC/IRA/RDC</td>
<td>22,300</td>
<td>900</td>
</tr>
<tr>
<td>RDC</td>
<td>15,000</td>
<td>15,000</td>
</tr>
<tr>
<td>JNC</td>
<td>5,000</td>
<td>5,000</td>
</tr>
<tr>
<td>ERP/RA</td>
<td>2,000</td>
<td>2,000</td>
</tr>
<tr>
<td>Concord</td>
<td>30,000</td>
<td>18,100</td>
</tr>
</tbody>
</table>

Buyers do not concede that any of them other than TTIC/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 purchases 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 $14 1/4 per share and four or five additional brokerage houses bidding $13 1/2 and asking $13 1/4 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 holdings to 43,500. This decli...
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(b) 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, any capital appreciation potential for the future which Scudder's investment policy requires it to seek. Applicants represent that the proposed transaction is consistent, with the general purposes of the Act because it is in the best interest of the 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 shall 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 notice thereof, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any post-hearings 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


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 with the Commission on January 23, 1978, and an amendment thereto on January 22, 1978, pursuant to section 3(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 Life Insurance Co., 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 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 insurers 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 securities is made from the 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 life 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 securities 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, preparing and depositing the purchase order, 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 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 a notice that 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 thereupon 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. 78-5548 Filed 2-28-78; 8:45 am]

[801-01]

[Release No. 10123; 812-42051]

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 & Co., 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 December 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 sections 15(a)(1) and 15(d) 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. Applicants 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, the income of the Puenda 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 allocation of income to the general partners will be given effect for federal income tax purposes, Applicants state that they have been advised by counsel 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 incorpora-
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 6% 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 entitled 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 the design of the Fund, 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, and 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 have 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 amendment within a week if 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, deduction and credit, 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 at least 90 percent of 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, till the time of his removal 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 remain a 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 is not subject to any income tax in the State of California, and (b) the
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 company, means any affiliated person of such investment company, and (2) any person who would be interested persons solely because they are directors or owners of such 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, which is a written instrument forming similar functions with respect to the partnership, 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.

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Applicants agree that any elective 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 0-9 of the Rules of Practice, an application under section 2(a)(19) of the Act, an order disposing of the application will be issued as of course fol-
NOTICES

AGENCY: 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 Whitemore, 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.

<table>
<thead>
<tr>
<th>Pesticide</th>
<th>Crop</th>
<th>Pest/disease</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cuprous oxide</td>
<td>Cocoa</td>
<td>Black pod</td>
</tr>
<tr>
<td></td>
<td>Coffee</td>
<td>Coffee berry disease</td>
</tr>
<tr>
<td>Lindane</td>
<td>Cocoa</td>
<td>Cocoa mirids</td>
</tr>
</tbody>
</table>

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 (Fenoxz). 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 non-toxic when ingested in a normal diet 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 Form 43 (F.R. 9816-23) of a Rebuttable Presumption Against Registration and Continued Registration of Pesticide Products Containing Lindane on the basis of laboratory evidence that lindane causes 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 Waive 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 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 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 minimal. 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.

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.


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 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.


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,
NOTICES


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 like to have your statement considered, contact Jerome Kurtz, Commissioner.


[FR Doc. 78-5283 Filed 2-28-78; 8:45 am]


Fiscal Service


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. 20228.

FEDERAL REGISTER, VOL. 43, NO. 41—WEDNESDAY, MARCH 1, 1978
sion Act of 1962 is expected to be made no later than August 20, 1978.


APPENDIX


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. 1802) 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

[F] [FR Doc. 78-5383 Filed 2-28-78; 8:45 am]

NOTICES

INTERSTATE COMMERCE COMMISSION

[Notice No. 599]

ASSIGNMENT OF HEARINGS

February 24, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument, appear 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 make their own arrangements to insure that they are notified of cancellations 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 a hearing room to be later designated, Section 5b Ap[ ] No. 1, Alaska Rail Water Association Agreement, now assigned March 7, 1978, at DC, is canceled and rescheduled to April 3, 1978, at Seattle, WA, in a hearing room to be later designated.

MC 134970 (Sub-No. 16), Unzicker Trucking, Inc., now assigned March 14, 1978, at Chicago, IL, and will be held at room 280, E. M. Dirksen Building, 219 South Dearborn Street.

MC 134622 (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 134622 (Sub-No. 26), 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.

Sincerely,

[FR Doc. 78-5386 Filed 2-28-78; 8:45 am]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY—ELIMINATION OF GATEWAY LETTER NOTICES


The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, air pollution, 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 notices 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, Washington, D.C., before March 15, 1978.
be filed with the Interstate Commerce Commission within 10 days from the date of this publication. A copy must also be served upon the 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. E1123) (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, MA, 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 PT 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; 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. E1123), 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., Washington, 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, NJ, OK, OR, TN, TX, UT, WA and WV and from those points in WV, KY, IN, NC, MO, SD, WA, and from those points in a line beginning at the VT-WV State line, extending along the New River to U.S. Hwy 19, to junction WV Hwy 3, to junction U.S. Hwy 119, to junction VA Hwy 949, 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 38, 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. Highway 127, to junction KY Hwy 355, to junction KY Hwy 52, 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 Jefferson County line to IN Hwy 636, 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 56, to junction IN Hwy 67, to junction U.S. Hwy 50 to the IN-I1 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 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 U.S. Hwy 50 to the IA-MO State line, and extending along U.S. Hwy 50 to junction IL Hwy 24 to the IL-MO State line, and extending along 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 U.S. Hwy 50 to the IA-MO State line, and extending along U.S. Hwy 50 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 273 to 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 48, to junction ND Hwy 18, to junction Interstate Hwy 94 to the ND-MN State line, and extending along U.S. Hwy 80, 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 Martinsville, VA.

No. MC 61825 (Sub-No. E1123), 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., Washington, DC 20036. Furniture parts and furniture materials, except commodities in bulk, from points in MA, CT, and RI to points in 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 U.S. Hwy 462, 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. E1123), 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., Washington, DC 20036. Furniture parts and furniture materials, except commodities in bulk, from points in MA, CT, and RI to points in 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 U.S. Hwy 462, 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.
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: G. W. Wofford (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 meat, fish, and poultry, require the use of special 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 35 to Lake Erie, (1)(b) between points in Harrison, Doddridge, Lewis, and Gliser 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 and extending along Interstate Hwy 70 to the OH-KY State line. The purpose of this filing is to eliminate the gateway of points in Martins Ferry, OH (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, on the one hand, and, on the other, points in the State of OH. The purpose of this filing is to eliminate the gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, Pike, Crenshaw, and Covington counties, on the one hand, and, on the other, points in the State of OH. The purpose of this filing is to eliminate the gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, Ellowa, Calhoun, Talla­dega, Coosa, Etowah, Cherokee, 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 gateway of points in and west of Jackson, Marshall, El...
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. 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). Commodities, the transportation of which, because of their size or weight, require the use of special equipment, between 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. E436), 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, and Texas 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). 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 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 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.

The purpose of this filing is to eliminate the gateways of points in OH in east and north of Erie, Lorain, Medina, Summit, Stark, and Columbiana Counties.

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). 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. 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 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. 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) Self-propelled articles (except in driveway 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, Doniphan, Oregon, Rock, Butler, Dunklin, and Pemiscot Counties, on the one hand, and, on the other,
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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 on the other, points 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 transportation of any shipment which, because of size or weight, require the use of special equipment; and related machinery and parts thereof 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. 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 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. 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 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. 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 NY. 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 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. 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 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.
and west of Cheboygan, Charlevoix, Antrim, Grand Traverse, Wexford, Lake, Newaygo, Kent, Allegan, Antrim, Grand Traverse, Wexford, Dallas, TX 75222. 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. 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 purpose of this filing is to eliminate the gateways of IL, IN, and KY.

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. 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 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 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 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 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. 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 purpose of this filing is to eliminate the gateways of IL and IN.

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 MN, 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 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 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 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, IN, and 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, 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 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, IN, and 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 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 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, IN, and KY.
weight, require the use of special equipment between points in MT, on the one hand, and points in WV, 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 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 picking up of pipe in connection with oil or gas pipelines. 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 Redwood Counties, 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 any pressure pipe and fittings and accessories thereof 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). Commodity 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 IN, on the one hand, and, on the other, points in WV. Restrictions: 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). Commodity, the transportation of which, because of their 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 Union County, SD, on the one hand, and, on the other, points in Racine and Kenosha Counties, WI, restricted against 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 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). Commodity, 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 VA and WI.

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). Commodity, the transportation of which, because of size or weight, require the use of special equipment; and related machinery and contractor's materials and supplies when moving in connection with such commodities, between points in VA and points in WV, 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 and IL.

No. MC 83539 (Sub-No. E499), 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). Commodity, the transportation of which, because of size or weight, require the use of special equipment; and related machinery and contractor's 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 picking up of pipe in connection with oil or gas pipelines. The purpose of this filing is to eliminate the gateways of SD, IA, IL, and IN.

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 and in west of Frederick County, on the one hand, and, on the other, points in WV and those points in WI, restricted against 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 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, those points in NC in and west of Madison, Monroe, and Henderson Counties. The purpose of this filing is to eliminate the gateways of PA and VA.

No. MC 83539 (Sub-No. E592), 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 WV and points in WI, restricted against 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 PA and VA.

No. MC 83539 (Sub-No. E593), 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, (B) between those points in MD in and west of Frederick County, on the one hand, and, on the other, those points in WV and those points in WI, restricted against 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 PA and VA.

No. MC 83539 (Sub-No. E594), 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, (C) between those points in MD in and west of Frederick County, on the one hand, and, on the other, those points in WV and those points in WI, restricted against 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 PA and VA.

No. MC 83539 (Sub-No. E595), 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, (D) between those points in MD in and west of Frederick County, on the one hand, and, on the other, those points in WV and those points in WI, restricted against 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 PA and VA.

No. MC 83539 (Sub-No. E596), 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, (E) between those points in MD in and west of Frederick County, on the one hand, and, on the other, those points in WV and those points in WI, restricted against 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 PA and VA.

No. MC 83539 (Sub-No. E597), 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, (F) between those points in MD in and west of Frederick County, on the one hand, and, on the other, those points in WV and those points in WI, restricted against 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 PA and VA.

No. MC 83539 (Sub-No. E598), 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, (G) between those points in MD in and west of Frederick County, on the one hand, and, on the other, those points in WV and those points in WI, restricted against 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 PA and VA.
NOTICES

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 WV-VA State line and extending east along U.S. Hwy 276, 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 correct the territorial description.

No. MC 106603 (Sub-No. E100), 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 WV-VA State line and extending east along U.S. Hwy 276, 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 correct the territorial description.

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 and those points in MO within 10 miles of the west bank of the Mississippi River. The purpose of this filing 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 (except in bulk), from Lansing, MI, 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 correct the territorial description.

No. MC 106603 (Sub-No. E80), 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 Lansing, 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 and those points in MO within 10 miles of the west bank of the Mississippi River. The purpose of this filing is to correct the territorial description.

No. MC 106603 (Sub-No. E79), 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 Lansing, 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 and those points in MO within 10 miles of the west bank of the Mississippi River. The purpose of this filing is to correct the territorial description.

No. MC 106603 (Sub-No. E78), 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 Lansing, 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 and those points in MO within 10 miles of the west bank of the Mississippi River. The purpose of this filing is to correct the territorial description.

No. MC 106603 (Sub-No. E77) (Correction), filed June 3, 1974. Applicant: DIRECT TRANSIT LINES, INC., P.O. Box 8099, Grand Rapids, MI 49508. Applicant's representative: Joe Day (as above). Petroleum products as described in Appendix XIII to the report on Descriptions in Motor Carrier Certificates, 61 MCC 209, in bulk, in tank vehicles, (except liquefied petroleum gas, anhydrous ammonia, and asphalt), from Lansing, 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 and those points in MO within 10 miles of the west bank of the Mississippi River. The purpose of this filing is to correct the territorial description.
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 junction IL Hwy 13, then west on IL Hwy 13 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 IL Hwy 17, then extending west to junction IL Hwy 7, 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 junction IL Hwy 57, then south on Interstate Hwy 57, then west of Illinois line and extending east along U.S. Hwy 50 to junction U.S. Hwy 51, then west on U.S. Hwy 51 to junction IL 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 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 380, Grand Rapids, MI 49508. Applicant's representative: Martin J. Leavitt, P.O. Box 400, Northville, MI 48177. 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, and northeast of a line beginning at the VA-WV State line, and extending northeast of a line beginning at the PA-MD State line, and extending east along IL 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 141, then south on PA Hwy 141 to junction PA Hwy 42, 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 West Virginia State line and extending north east along IL 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 south east along IL Hwy 3 to junction IL Hwy 149, then south 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

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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 point in Barnes, Cass, Dickie, Kiddler, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent and Stutsman Counties. (2) From points in Inyo, Fresno, Kings, Tulare, Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, Santa Bernardino, Alameda, Alpine, Amador, Calaveras, Colusa, Contra Costa, Eldorado, Madera, Marin, Mariposa, Merced, Mono, Monterey, Napa, Placer, San Benito, San Francisco, San Mateo, San Joaquin, San Luis Obispo, 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 Giann, 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, 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, and Walton Counties, FL; Bartow, Chattanooga, Carroll, Catoma, Dade, Douglas, Floyd, Gordon, Haralson, Heard, Murray, Paulding, Polk, Walker and Whitfield Counties, GA; Bridgeport, Chester, Crockett, Dyer, Cumberland, Fentress, Franklin, Grundy, Hamilton, Lincoln, Loudon, McMinn, Marion, Marshall, Meigs, Monroe, Moore, Monroe, Polk, Rome, 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, Wilson, Benton, Carroll, Decatur, Giles, Hardin, Henderson, Henry, Hickman, Houston, Humphreys, Lawrence, Lewis, Maury, Perry, Stewart, Wayne, Coffee, Dale, Fannin, records in Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Cossa, Cullman, Elmore, Etowah, Franklin, Giles, Clarke, Covington, Dallas, Escambia, Escambia, Gulf, Holmes, Jackson, Van Buren, Putnam, and Wayne Counties, CT, to points in Middlesex, and New Haven Counties, CT, to points in Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Cossa, Cullman, Elmore, Etowah, Franklin, Giles, Clarke, Covington, Dallas, Escambia, Escambia, Gulf, Holmes, Jackson, Van Buren, Putnam, and Wayne Counties, FL; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madison, Colbert, Shelby, Tipton, Cannon, Cheatham, Clay, Davidson, DeKalb, Dickson, Jackson, Macon, Montgomery, Overton, Pickett, Putnam, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, Wilson, Benton, Franklin, Lauderdale, Lawrence, Marion, Pickens, Tuscaloosa, Walker, Winston, DeKalb, Jackson, Limestone, Madison, Marshall, Morgan, Fayette, Floyd, Gordon, Haralson, Heard, Murray, Paulding, Polk, Walker and Whitfield Counties, GA; Bumcombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania and Yancey Counties, NC; Abbeville, Anderson, Greenville, Oconee, Pickens, Cherokee, Chester, Edgefield, Greenwood, Lamens, McCormick, Newberry, Saluda, Spartanburg, Union and York Counties, SC; Boone, Cabell, Lincoln, Montgomery, Overton, Pickett, Robertson, Rutherford, Santee, Saluda, Spartanburg, Union and York Counties, WV. The purpose of this filing is to eliminate the gateway of points in KY. From points in Fairfield, Middlesex, and New Furniture, uncrated, the gateway of points in KY. 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: 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 Kentucky, (2) From points in Tennessee, exception points in Hamblen County, TN. The purpose of this filing is to eliminate the gateway of points in KY.

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 representatives: Gary D. Bishop and Gary M. Crist (same as above) New Furniture, uncrated: From points in Kentucky, (2) From points in Tennessee, exception points in Hamblen County, TN.
NOTICES


No. MC 107515 (Sub-No. E249), filed May 29, 1974. Applicant: REFRIGER­ATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30305. Ap­plicant's representative: Bruce E. Mitchell, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. Canned meats, canned meat products, and canned meat byproducts (except hides) from the plantsite of Armour & Co., near Sterling, IL, to Houston and San Antonio, TX, and their commercial zones and that portion 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, along Interstate Highway 10 from San Antonio to Austin, TX, and 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 30305. Ap­plicant's representative: Bruce E. Mitchell, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. 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, on and east of a line beginning at the WV-OH State line on Interstate Hwy 71 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 30305. 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 91W, and points in OH, MI, or on or east of U.S. 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, State line; KY; Atlanta, GA, and Gatesville, NC.

No. MC 107515 (Sub-No. E548), filed January 27, 1975. Applicant: REFRIGER­ATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30305. 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 Similk Bay 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 90 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 200 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 85, 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, Kittitas, Grant, Okanogan, Whatcom, Whatcom-Skagit 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 MT Hwy 89, then over MT Hwy 89 to junction U.S. Hwy 29 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 (6) from 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 (c) above. (6) From Texarkana, TX, to OR, WA; to that portion of OR, 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 originated 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 products, 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 Giles County, 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 OR on or west 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 miles 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 CA 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 gateways of Bristow, 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 IN Hwy 3 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 to its junction with 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 59; then along U.S. Hwy 59 all points in CA on, south or west of a line beginning at the AZ-CA State line to Needles and extending along U.S. Hwy 395 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. E564), 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...
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: 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 boundary line to points in VA on or south of a line commencing at the VA-WV State boundary line, then over VA Hwy 5 to junction VA Hwy 9, then over VA Hwy 9 to junction IL Hwy 11, then over IL Hwy 11 to junction IL Hwy 36, then over IL Hwy 36 to the CO-UT State line and extending 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 boundary line to points in VA on or south of a line commencing at the VA-WV State boundary line, then over VA Hwy 5 to junction VA Hwy 9, then over VA Hwy 9 to junction IL Hwy 11, then over IL Hwy 11 to junction IL Hwy 36, then over IL Hwy 36 to the CO-UT State line and extending 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. 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 points in MA, RI, DC and 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, 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 Knoxville, TN.

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. Serby, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. Frozen foods (except in bulk) in vehicles equipped with mechanical refrigeration from points in MA, RI, DC and 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, 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 points in Rocky Mount, NC, 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 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 State 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, MA, RI, NJ, PA, MD, DE, VA, DC, KY, NC, SC, TN, GA, 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: 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 points in MA, RI, DC and 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, 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.
NOTICES

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) No carrier 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, Monee, 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, CO, PA, 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 306, 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 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 Oswego, NY, and extending over Lake Ontario 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 18, then over U.S. Hwy 18, then over U.S. Hwy 87 to over 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 west 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 Pulaiki County, KY, Powell County, KY between 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 Bluegrass Cooperage, Louisville, KY.

No. MC 115331 (Sub-No. E24) (correction), filed May 16, 1976, 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: Louis J. Amato, Box E, Bowling Green, KY 42101. Lumber, from points in KY on and east of a line beginning at the KY-TN State line, to points in TN 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 Powell County, KY, on and east of U.S. Hwy 31E.

No. MC 116014 (Sub-No. E23), 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-VA State line, then along Interstate Hwy 83 to its junction with 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 Powell County, KY, on and east of U.S. Hwy 31E.

No. MC 116014 (Sub-No. E22), filed June 29, 1975. Applicant: DAILY EXPRESS, INC., 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 and south of the Blue Ridge Mountains, except when moving in Haywood County; 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.
NOTICES

FEDERAL REGISTER, VOL. 43, NO. 41 — WEDNESDAY, MARCH 1, 1978
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 52; then southward on U.S. Hwy 52 to a junction with SC Hwy 45; then eastward on SC Hwy 45 to McCallieville, SC, and then due east to the Atlantic Ocean, IC, to IL (except points in the St. Louis commercial zone), IN, KY, MI, MO (except points in the West 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. E138), filed April 19, 1978. 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 MO (except the St. Louis commercial zone), 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 northward 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-OK State line. The purpose of this filing is to eliminate the gateway of Charlotte, NC.

No. MC 118831 (Sub-No. E138), filed April 19, 1978. 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 MO (except the St. Louis commercial zone), 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 northward 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-OK State line. The purpose of this filing is to eliminate the gateway of Charlotte, NC.
NOTICES

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 Knok, 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.
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).

sunshine act meetings

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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.


SUBJECT: 12. 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.)

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-273-3568.

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

502-273-3568 (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.


SUBJECT:

1. Ratification of items adopted by notation.


3. Docket 24694 and 31976, Miami-Los Angeles cases, Petitions for Reconsideration (OGC).


5. Docket 29323, International Air Service Co., Acquisition of Control of Aloha Airlines, Inc.—motion for interim approval of interlocking relationship (OGC).


11. Docket 29880, Compensation of participants in Board proceedings (Memo No. 6751-A, 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, BIA).

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 Air (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, BIA, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-273-3568.

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
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 Transmission No. 113, revising its Tariff FCC No. 8 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:


FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., Wednesday, March 1, 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:

Complaints and Compliance—1—Results of investigations 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, Pittsburgh, Kans. KTJ, Joplin, Mo.

Hearing—1—Petition for special relief in the Reel Entertainment, Inc. TV renewal proceeding. (Docket No. 21296)

Hearing—2—Motion 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, 15766, 15764, 15765 and 15768.)

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 KTV, Inc., Kirksville, Mo. television proceedings. (Docket No. 20100.)

Hearing—6—Petition for reconsideration filed by Talon 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 Broadcasting Co. (KWSR), Rifle, Colo. renewal proceedings. (Docket No. 20231.)

CONTACT PERSON FOR MORE INFORMATION:


FEDERAL DEPOSIT INSURANCE CORPORATION.

On Friday, February 24, 1978, Chairman George A. LeMaistre and Director John G. Helman (Controller 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.


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
FEDERAL ENERGY REGULATORY COMMISSION.
(Following regular Commission meeting.)
STATUTORY PROVISIONS:
MATTERS TO BE CONSIDERED:
STATUS: Closed.
CONTACT PERSON FOR MORE INFORMATION:
KENNETH F. PLUMB, Secretary.
[S-444-78 Filed 2-27-78; 9:53 am]

[6740-02]
8
FEDERAL ENERGY REGULATORY COMMISSION.
FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:
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. 5580-26 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 Co. v. Atlantic Lines—Review of initial decision
8. Docket No. 76-58: Reports by Common Carriers by water in the Domestic Offshore Trades—Consideration of record
Portions closed to the public:

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 (46 CFR Part 50), 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 202-653-6150.


FRANCIS T. MASTERSON,
Executive Director.

[S-456-78 Filed 2-27-78; 3:39 pm]
[7020-02] 12
INTERNATIONAL TRADE COMMISSION.
PLACE: Seattle Center, 305 Harrison 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-D—briefing and vote on the question of market disruption).
6. Any items left over from previous agenda.
CONTACT PERSON 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.).
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]
DEPARTMENT OF
COMMERC
National Oceanic and Atmospheric Administration

STATE COASTAL MANAGEMENT PROGRAMS
Development and Approval
AGENCY: National Oceanic and Atmospheric Administration (NOAA) Department of Commerce.

ACTION: Interim final rule.

SUMMARY: These interim final regulations 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, 202-694-1672.

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 hold a 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 interim final form of these regulations, pursuant to the comment period, and to submit written comments on such summaries. Following consideration of these discussions and any other comments received during the comment period, and in making revisions appropriate and legal, NOAA will promulgate these regulations in final form.

These regulations revise and supercede the following sets of existing regulations dealing with interpretation of program approval requirements being provided by the Office of Coastal Zone Management (OCZM).


(2) Final Coastal Zone Management Program Approval Regulations (15 CFR 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 regulations required in respect to management programs.

(4) Final Coastal Zone Management Program Approval Regulations Amendment (15 CFR Part 923) published in the Federal Register on November 3, 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 that approved management programs, and termination and withdrawal of funding of approved management programs.

On August 29, 1977, NOAA published proposed revisions to the above-reference 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.

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 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 306(b) of the Act are superceded 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) 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 in defining 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 comments 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 have been made 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. NOAA particularly invites further consideration of these techniques and has determined 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 reasonable interpretation of the requirements of the Act and provide adequate safeguards (in §§923.3(a)(2) and 923.42(c)(4)(ii)) to assure sufficient 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 §923.38(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 commenters who prefer 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 decided to incorporate provisions of 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 more stringent pollution control requirements to preclude or restrict unreasonably the siting of energy facilities which otherwise have a potentially better fit, especially when these uses involve regional benefits.

In section 306(c)(6) of the Act and §923.44(c)(4) which informed States that assurance be provided that local regulations do not unreasonably exclude or restrict the use of regional benefit, the Act gives “high priority” to the protection of national systems. Accordingly, while the primary focus of subsection 306(c)(6) 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 aims to 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 siting and siting of facilities with a separate 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 regional entities.

With respect to the comment that assurance must be provided that local regulations do not unreasonably exclude or restrict use of regional benefit when these uses involve energy facilities, NOAA does not clearly identify that these commentators have confused the requirements of subsection 306(c)(8) of the Act with subsection 306(c)(2) of the Act. Subsection 306(c)(8) calls for “adequate consideration” which is not synonymous 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 distinct requirement pursuant to subsection 306(c)(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 a single unit of local government, and (2) the direct and significant impact of these uses 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

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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 coastal lines 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 incompatible 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 management. 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,” “activity zones 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 afford 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 requirement to provide an energy facility planning process and to consider adequately the national interest as these are already 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) 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 commentator 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-
reviewers suggested this paragraph be revised to indicate that State management programs should address endangered species and marine mammals and, in one case, areas containing coastal natural features. Other 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 for use in each of 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, paragraph (f) has been retitled "Coastal Development Policies."

With respect to the second comment, paragraph (f)(1) has been revised to include "* * * areas containing wildlife habitats, and nesting, and breeding 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 (1)-(k)) be expanded to provide more guidance to States on meeting the requirements 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 Regulations.

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 (1)-(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 develop a Federal responsibility 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 expanded the 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 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(c)(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 include the use of 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. 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 proper wetland management and therefore should be made a requirement for program approval.

NOAA response. While NOAA agrees that the inventories suggested in paragraphs (b) and (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) shall be 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 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 the development of program 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 words “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 scope 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 Onshore, “infrastructure,” and “associated transportation facilities” have 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 decisions of 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 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 by the State 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 response. 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 should 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 local or financial assistance) is a separate issue, and is dealt with in § 923.3(h).

(3) With respect to paragraph (e), 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 upon 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 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 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 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 "performance standards" 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 are not 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. The 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 term "regional benefit" is not defined in the Act or its legislative history to imply that 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(e)(2) (which deals with consideration of facilities in which there is a national interest) and subsection 306(e)(3)(B) (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 should be amended so that 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 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 should 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 and are otherwise justified as facilities, 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 is made in the text 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 agrees 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 (a).

(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 (e) has been added to clarify the relationship between this section and §923.43.

(f) Section 923.14—Energy Facility Planning Process. (1) Several reviewers commented on this section which is 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. Relatively, 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 coastal zone; 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 location 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 (b) requires a State to develop, in its 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 these comments were 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 in the coastal zone;
(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 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. Relatively, 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 the 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 paragraphs (d)-(l), is more specific than that provided in proposed paragraph (c) and therefore more helpful to States in developing the required planning process.

One commentator 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, NOAA, in any case, identifies 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 the coastal program. It is important in adding this planning element. 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.

Finally, one reviewer objected to the statement in proposed paragraph (e), now paragraph (j), that State programs could be approved without compliance with the Act. This commentator believed the Act is the "should" in the second to last sentence of paragraph (e) 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, identifies that the first suggestion is implied in paragraph (a)(2) and the remaining portions of paragraph (c).

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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 protection or preservation of areas of particular concern. 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 is of particular concern for their natural values. State “X” determines that all its salt marshes are of particular concern for their natural values. State “X” determines that all its salt marshes are of particular concern for their natural values.

(2) One reviewer suggested that the regulations clarify that designation of areas of particular concern may involve no additional enforceable authority 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 affect an inconsistency 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, the coastal zones (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 recognizes the importance of 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 (d) 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 paragraph (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” 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)(6). 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 wording of this section.

NOAA response. In response to the first and last comments, NOAA believes the 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 for the entire 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 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.

(3) 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 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. Those areas of particular concern are areas designated by the time and effort required for preservation or restoration to be accomplished. These areas for preservation or restoration are 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 coastal zone.

(1) **Section 923.25—Shorefront Access and Protection Planning.** 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 shoreline areas 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 make planning decisions according to the Act.

**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 present plans for the state’s coastal zone that address coastal areas that affect coastal waters.

(ii) Require States to demonstrate the enforceability of policies in light of the conservation purposes of the Act.

(iii) Delete the term “and/or” in the current wording of the Act.

**NOAA response.** Paragraphs (a) (3) and (5) already accomplish this very intent.

(5) One reviewer suggested that the word “and/or” have been deleted and the words “and” or “or” have been substituted as appropriate.

**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 934(a) 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 impact 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) be deleted.

(4) One reviewer objected to the possibility that interior portions of main islands, not be subject to the Act.

**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.** One reviewer suggested that this section also should address the fact that erosion is a natural ecological phenomenon and that several factors consider the impacts of mitigation or restoration of 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.

(f) **Section 923.30—General.**

One commentator requested the regulations cite the definition of “coastal waters” from section 934(a) of the Act.

**NOAA response.** NOAA has revised the regulations to include an identification of whether the planning requirements and/or the words “and” or “or” have been substituted as appropriate.

(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 there is no statutory basis for the inclusion of entire 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 that “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, or lost from a one hundred-year storm. Another reviewer suggested that 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 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 part 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 mingled 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 usually 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 recognizes 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 reviewer 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 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.

(3) Two reviewers suggested that 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 of 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 be excluded. Still another commentator was concerned how the regulations would affect frequent surplus 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 of leased lands was reconsidered. 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 surplus lands, until the General Services Administration declares Federal lands surplus and available for disposal 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 exclude Federal 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 the regulatory 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 misinterpreted 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 (b), 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 substantial evidence 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 must be legal opinions 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 (f), one commentator suggested that the Act 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. The suggestion was made 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 approval of 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 changes above.

(5) One commentator suggested the language in paragraph (c)(4) be deleted to follow more closely 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)(iv) has been added to this section that requires procedures for State approval of local programs to include provisions for:

(a) The public and governmental entities to provide input into the development of local programs;

(b) 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 (d)(9) be considered an 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)(2) 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 are involved.

(2) This same reviewer made a suggestion 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. Paragraph (e)(1) has been revised accordingly.

(1) Statewide siting laws that supercede 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;

(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 requirements 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" as being 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 of prescribed standards 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 (e)(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 (e)(4) would require detail beyond the scope of this section.

NOAA response. NOAA appreciates the concern of this reviewer but believes the language of paragraph (e)(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 implement 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 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 mandating a statement from Federal agencies.

(4) Two reviewers commented that there is no language in the Act requiring States to accommodate, even where feasible. 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 “determiners” of national interests.

NOAA response. The present phrasing is correct as it is meant to provide suggestions as to viable approaches to consultation. It is not meant to be 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 public 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 (referred to 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.

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)(9) of the Act.

NOAA response. 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)(9).

(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)) be expanded to include both direct comments and 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 agencies, especially Fed­ eral 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 Fed­ eral agencies’ comments should be di­ rectly 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)(3), with specific reference to major siting con­ cerns 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 pro­ gram document, may be both appro­ priate and desirable. Accordingly, States may find it useful to maintain a separate and direct response to Federal agencies.

(d) Section 923.53—Federal Consis­ tency Procedures. (1) One commenta­ tor 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 §30.35 of the Federal Consistency regulations.

**NOAA response.** This suggestion has been accepted.

(2) One reviewer suggested States be able to include the consistency pro­ cedures as an appendix rather than as part of the main body of the docu­ ment.

**NOAA response.** This suggestion has been accepted.

(3) In addition, this section has been expanded to provide States with fur­ ther guidance as to the Federal consis­ tency procedures and listings that need to be included as part of the management program.

(e) Section 923.54—Mediation. (1) One commentator suggested the regula­ tions ignore the statutory directive that the Secretary shall seek to med­ iate, by allowing any party to refuse to participate. Relatedly, another review­ er objected that mediation efforts should last only so long as both par­ ties agree to participate.

**NOAA response.** Unlike arbitration, the results of mediation are not bind­ ing but rather advisory. The essence of mediation is that disagreeing parties voluntarily agree to discuss the issue and settle in a manner that both parties agree is fair and conciliatory. Under the con­ cept of mediation and under the stat­ ute, the Secretary has no authority to force parties to agree to initiate medi­ ation, or even to continue mediation, once it has been determined to be not in the public interest.

(2) One reviewer suggested that the regulations be revised to require all mediation conferences be public.

**NOAA response.** This is not required under the Action Procedure Act or any other Federal law. How­ ever, in response to this reviewer’s con­ cern, NOAA has added a provision to paragraph (f) for notice in the Fed­ eral Register of such conferences.

(3) In connection with paragraph (i), one reviewer suggested the regulations include criteria for the Assistant Ad­ ministrator’s determination of whether inclusion of a serious disagreement in a State’s management program would be subject to program approval. Another re­ viewer suggested a time limit be pro­ vided 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 ap­ provability. 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. Therefore, NOAA cannot provide the criteria requested.

Finally, with respect to the last com­ ment, to the extent the Assistant Ad­ ministrator’s decision is an appealable item, it is so on the basis of laws other than this Act and therefore the regu­ lations need not state this to make it a fact.

(1) Section 923.55—Full Participa­ tion. (1) One commentator felt it was unclear if this section applied to Fed­ eral agencies, and accordingly, wheth­ er a mechanism was required to guar­ antee continued Federal consultation after program approval.

**NOAA response.** While the require­ ments of this section do not apply to Federal agencies, the requirement of §923.52(b)(3) for a process for consid­ eration of State and local agencies’ interests in fa­ cilities that are more than local in nature during program implementa­ tion guarantees a mechanism for con­ tinued 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 re­ quire a “sunshine” provision for open sessions; an obligation on States to se­ cular and consider public comments; and to define interested public and partic­ ipant bodies.

**NOAA response.** The thrust of these suggestions is addressed in the re­ quirements of this section, especially paragraph (a) (2) and (3), and para­ graph (2)(6) which has not provided 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 require­ ments of paragraph (a) already cover the basic purpose of this suggestion— to ensure public knowledge of and par­ ticipation in program development. In some cases, NOAA does not intend the items in proposed paragraph (e) (now paragraph (d)), to be requirements but rather suggestions.

(g) Section 923.56—Plan Coordina­ tion. (1) Three commentators suggest­ ed that no program should be ap­ proved when unresolved conflicts exist with other public agency plans.

**NOAA response.** This recommenda­ tion is not a requirement of the Act. Subsection 306(c)(2)(A) calls for co­ ordination which does not necessarily imply resolution of conflicts. More­ over, 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) al­ ready 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 imple­ mentation 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 requirements are addressed by separate sections of the Act and these regula­ tions.

(3) One commentator questioned whether the A-95 process discussed in paragraph (d) 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.
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 be 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 words "landmarks" in sentence (e)(2)(v) be changed to "resources."

NOAA response. This suggestion has been adopted.

(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 those of the State. Another reviewer suggested deleting the words "incompatible with."

One reviewer suggested 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 suggested 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)(5).

(1) 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 would object 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 other shortened version of the program of Coastal Zone Management (OCZM) 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)(4) be amended to allow States to submit summaries of public hearings within 30 days following a mail program submitted 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 (e), 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 defined in the National Environmental Policy Act (NEPA) and CEQ guidelines. Paragraph (c) has been revised to reflect this.

(b) 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 management 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 § 923.85(c).

(c) 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 are 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 (1).

(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 J

(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.

(c) Section 923.90—General. One reviewer suggested language to require adequate notice be given States in the event of amendments or refinements. Adequate notice should 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 commentator suggested that the initial grant, signed by the Governor, identify administrative personnel authorized to request amendments.

NOAA response. This comment is more appropriate at §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—Application 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 Bldg., 1330 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.


T. P. GLEITER, Assistant Administrator for Administration.

PART 923—COASTAL ZONE MANAGEMENT PROGRAM APPROVAL REGULATIONS

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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 conformity 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.

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 II (§§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).

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 comments 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 delegations of authority from the Assistant Administrator of the National Oceanic and Atmospheric Administration (NOAA) by Amendment 5 of the Department of Commerce Organizational Order 25-3A, 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.
7. Historic, cultural, esthetic and conservation values.
8. Mineral resources and extraction.
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;
- Fish and Wildlife Service;
- General Services Administration;
- National Oceanic and Atmospheric Administration;
- Nuclear Regulatory Commission;
- Public Health Service;
- Soil Conservation Service;
- United States Coast Guard;
- United States Fish and Wildlife Service;
- United States Forest Service;
- United States Geological Survey;
- United States International Trade Commission;
- United States Minerals Management Service;
- United States Minerals Yearbook Commission;
- United States National Aeronautics and Space Administration;
- United States National Park Service;
- United States Postal Service;
- United States Atomic Energy Commission;
- United States Bureau of Reclamation;
- United States Coast Guard;
- United States Information Agency;
- United States National Aeronautics and Space Administration;
- United States National Aeronautics and Space Administration.

(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 304(3), the 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;

§ 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 pursuant 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 ensure 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.)

(1) (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, or areas to be subject to the management programs 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 Sections 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.

(1) 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, including the water use programs for the coastal zone, including the use of new coastal development, including reclamation of wetlands, by appropriate and efficient methods and processes for dealing with land and water use decisions of more than local significance.

(i) Special natural and scenic characteris-tics 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 the Federal and local governments and other vitally affected interests, in developing land use, resource policies, and water use programs for the coastal zone, including coastal development, including using the national standards and appropriate methods, and processes for dealing with land and water use decisions of more than local significance.

(ii) Requirement. Particular attention shall be devoted to subsection (b) of the Act which calls for the States, in cooperation with the Federal and local governments and other vitally affected interests, in developing land use, resource policies, and water use programs for the coastal zone, including coastal development, including reclamation of wetlands, by appropriate and efficient methods and processes for dealing with land and water use decisions of more than local significance.

(iii) Requirement. Particular attention shall be devoted to subsection (b) of the Act which calls for the States, in cooperation with the Federal and local governments and other vitally affected interests, in developing land use, resource policies, and water use programs for the coastal zone, including coastal development, including reclamation of wetlands, by appropriate and efficient methods, and processes for dealing with land and water use decisions of more than local significance.

(2) Coastal development policies are those that address such matters as shoreline access, ports and harbors, energy facilities, coastal dependency of large-scale industrial, commercial, recreational and institutional developments, mineral extraction, on-shore OCS-related development; and

(3) Government process policies are those which address such matters as governmental and state responsibilities 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 local significance in a State are addressed by appropriate policies in the program.

(b) 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:

(i) 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.

(ii) 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 the 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 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.

2. Conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating and licensing activities, are deemed necessary in order that the impacts in those areas. These policies shall be subject to the terms of the management program.

3. Determination of these uses will assist in directing 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.

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.

(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 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 losses, and 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. It is the responsibility of *** 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 shall consider factors relevant to a proposal's effect on the natural and beneficial values of the wetlands. Among these factors are: (a) public health, safety, and welfare, including water supply, quality, recharge and discharge, flood hazard, and storm hazards, and sediment and erosion; (b) maintenance of natural systems, including conservation and long term productivity of wetlands, fisheries, flora and fauna, and habitat diversity and stability, hydrologic and geologic 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.

(f) Comment. With respect to floodplains, 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 to water. 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.

§ 923.12 Use permissibility.

(a) Requirement. In order to meet the requirements of subsection 305(b)(2) of the Act and the associated regulations of 43 CFR 306(b)(2), States must develop policies and procedures by which uses, determined to be subject to the management 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.

(f) 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) Compatibility 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 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 the presence of threatened or otherwise coastal species are particularly important concerns; and

(5) Water dependency of various activities and uses, including those related to energy.

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 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 impact of protecting 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 dumps, or the development of 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 area wide 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 indicate 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 impacts on coastal resources that 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 Federal 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 or indirect 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 appropriate 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 305(c)(6) having to do with consideration of national interests involved in planning for and siting of energy 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 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.

Comment. The energy facilities 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 related or secondary energy facilities 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 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 are encouraged to adopt 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 occur 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.

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 and environmental impacts, 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 of such facilities. 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 sitability of alternative locations for particular facilities. The actual analysis of these alternatives 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 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 relevant 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.
§ 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 within the coastal zone 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 area shall include (3) (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 man-made 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, figurative (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 hazardous if developed by 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 reefs, mangrove stands.

(2) Designation does not necessarily require administrative 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 or sites, such as 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 of 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 area shall include (5) (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

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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 procedures 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 (1) (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; and

(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 can be made 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 accessing public areas and an identification of public areas meeting that definition;

(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 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, historic, 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 use facilities 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 shore areas, scenic coastal or esthetic value 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 to States through paragraph (g) of §923.21.

(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 plant communities (e.g., submerged lands, tidalflats, foreshore, dry sand area, line of vegeta-
§ 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 impacts 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 and erosion, including policies regarding preferences for non-structural, structural and/or no controls;

(2) Articulation of State policies pertaining to erosion, including policies per­taining to, for example, erosion that are not easily mitigated or managed by States, and policies that are unique or that are intended to protect specific areas or special uses.

(b) Comment. State coastal zone management programs that are sub­mitted and approved prior to October 1, 1978, may be acquired using subsection 305(b)(9) funds. States should consult the requirements of subsection 305(b)(9) of the Act and submit planning programs to the Land and Water Conservation Fund (16 U.S.C. 460 et seq.) and other funding programs pursuant to subsections 305(b)(3) and 306(c)(9). States must include a planning process that can assess impacts 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 and erosion, including policies regarding preferences for non-structural, structural and/or no controls;

(2) Articulation of State policies pertaining to erosion, including policies per­taining to, for example, erosion that are not easily mitigated or managed by States, and policies that are unique or that are intended to protect specific areas or special uses.

(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, 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.

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§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 area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-types; bays, sounds, and marshes, and (B) in other areas, those coastal waters and, therefore, require management as part of a State's program.

(d) Comment. Statutory Citation, Subsection 304(2):
The term "coastal zones" 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-types; bays, sounds, and marshes, and (B) in other areas, those coastal waters and, therefore, require management as part of a State's program.

§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 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. Included 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. Because such lands are more limited than non-trust lands. According to the Federal Government. Because 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.)

(2) Certain uses may cause direct and significant impacts only in terms of water 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 to ensure that methods used to analyze various land and water uses and their impacts on coastal waters.
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(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 or graphic form depends on the geographic scope of the management program. If the program and to assist them in determining 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 period of time in order not to cause unnecessary uncertainty for affected parties.

§ 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 under 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 precise 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 offshore islands or other structures.

(d) Requirement. 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 graphic 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., counties, towns 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 unacceptable. The boundary must include 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.

§ 923.33 Excluded lands.

(a) Requirement. States must exclude from their coastal management zone those lands owned, leased, held in trust or otherwise used solely by Federally owned or controlled entities. It is recognized that such exclusions should deter titles to Federal lands in the near future, especially those that may 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.

(b) 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 title to Federal lands 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.
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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 program 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 to encompass the 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 adequacy of authorities are the crucial underpinnings of the management structure on which a State will rely to ensure such compliance. This demonstration will be in the context of one or a combination of the three control techniques specified in section 308(e)(1) of the Act as described in § 923.42 below.

(b) 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 308(e)(1) of the Act as described in § 923.42 below.

(c) Other legal instruments (including, but not limited to, agreements) that will be used to carry out the State's 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 conflict 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.

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.

(d) Comment. Statutory Citation, Subsection 306(c)(7):
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, including interagency agencies, such other legal instruments (including agreements) are necessary to achieve 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 procedures under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies designated under section 204 of the Act will be applied.

(g) Comment. Where the acquisition techniques chosen pursuant to subsection 306(e)(1) of the Act, States must have adopted at the time of program approval the legal authorities, which expressly are a part of the management program and to which the Federal consistency provisions of the Act will be applied.

(h) Comment. When the authority required under subsection (d) of this section is to be judicial review or appeal.

Comment. Where the acquisition techniques chosen pursuant to subsection 306(e)(1) of the Act, States must have adopted at the time of program approval the legal authorities, which expressly are a part of the management program and to which the Federal consistency provisions of the Act will be applied.
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.

(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:

1. The degree of specificity required in the State criteria and standards,
2. The extent to which local programs, ordinances or regulations must be in place prior to approval of the State's management program, and
3. 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.

CHART: OPTIONS UNDER TECHNIQUE 306(e)(1)(A)

<table>
<thead>
<tr>
<th>Local Programs &amp; Regs do not meet State criteria</th>
<th>Local Programs &amp; Regs meet State criteria</th>
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<tbody>
<tr>
<td>1. State Must Have the Ability To:</td>
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<tr>
<td>a) Directly enforce the standards and criteria</td>
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<tr>
<td>b) Prepare Local Program &amp; Regs</td>
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<tr>
<td>c) Prepare and Enforce Local Program &amp; Regs</td>
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<tr>
<td>d) Seek Judicial Relief Against Local Gov't For Failure to Adopt Program &amp; Regs.</td>
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<tr>
<td>2. State Monitor Enforcement</td>
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<tr>
<td>a) Directly enforce the Local Gov't's Program &amp; Regulations</td>
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<tr>
<td>b) Directly enforce That Portion of the Local Program That Is Being Enforced Improperly</td>
<td></td>
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<tr>
<td>c) Seek Judicial Relief Against Local Gov't For Failure to Properly Enforce.</td>
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<tr>
<td>d) Review Local Govt's Actions on a Case-by-Case Basis and Prevent Those Actions Inconsistent with the Standards and Criteria</td>
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<tr>
<td>e) Insure Enforcement by Intermediate Level Gov't.</td>
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<tr>
<td>f) Insure Enforcement by State’s subject to State review,</td>
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(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:

1. The degree of specificity required in the State criteria and standards,
2. The extent to which local programs, ordinances or regulations must be in place prior to approval of the State's management program, and
3. 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.
Technique A the State establishes policies, standards and criteria regarding... 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 involved in the management of the 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 nor 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 cliffs and bluffs.

(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 requirements for 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;

(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 adequacy 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 goals, policies and objectives of the management program between the time of section 306 approval and 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 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), consistent 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 impose sanctions 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 the 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;

(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 6 on chart.) To ensure local governments comply with the State management policies, the State must establish a monitoring system. (Item 6 on chart.) The State agency designated pursuant to §923.41(c)(5)(v) of the Act will be responsible for establishing a monitoring system capable of detecting patterns of noncompliance except that in the case of facilities in which there is a national interest or use 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 diffuse nature of the determinations 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 plans 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 continuing 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.) When State action is required because of failure by a local agency 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 enforce the implementation of subdivisions of subdivision applications;

(iii) Seek judicial relief against local government for failure to properly enforce;

(iv) Review local government actions of 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;

(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 by direct executive order of the Governor or by a State statute. As a State increases the power it has to prevent those actions contrary to the management program, it will be necessary to assure such actions are in conformance with the State's management policies. In States 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 authority. 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.

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(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 the 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 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 a part of an interagency agreement 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 as 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 revisions would be a necessary part of the program approval.

(c) 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 require 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 enforceability 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 of the Act. These are that:

(i) Prior to approving or disapproving the consistency of a development plan, project or 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 unnecessarily restrict or exclude uses of regional benefit. These examples are not exclusive, but rather illustrative of approaches that will meet the requirements of this section:

(i) Statewide siting laws that precede local regulations when necessary;

(ii) 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;

(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 as the "arbitrary or capricious" siting 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-
In the State Implementation Plans (SIPs) required by the Clean Air Act.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Statutory Citation, Subsection 306(c)(5):</th>
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<tbody>
<tr>
<td>(a) Requirement. In order to fulfill the requirements of subsections 305(b)(6) and 306(c)(7) 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:</td>
<td></td>
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<tr>
<td>(1) The fiscal and legal capability to accept and administer grant funds, to audit and control expenditures of implementation funds by any recipient of such monies.</td>
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<tr>
<td>(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</td>
<td></td>
</tr>
<tr>
<td>(3) The ability to request approval from the Assistant Administrator for Oceans and Coastal Zone Management from the State agency designated pursuant to subsection 306(c)(5) of the Act.</td>
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</table>

§ 923.45 Organizational structure.

(1) The requirement applicable to the following

(a) Requirement. In order to fulfill the requirement of subsections 305(b)(6) and 306(c)(7) 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 agency responsibilities, 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 306(b)(6): The management program for each coastal state shall include a description of the organizational structure proposed to implement such management program including the responsibilities and interrelationships of local, area wide, state, regional and interstate agencies in the management process.

§ 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 the 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 the determination by the Federal Water Pollution Act as amended, or the Clean Air Act as amended, or (2) established by the Federal Government pursuant to such Act. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water 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. The program must incorporate 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 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 or are forecasted 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
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§ 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) Attest to the fact that the State has the authorities necessary to implement the management program; and

(4) Attest 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.

§ 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 to 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 enhance the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist State and local governments 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 Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with State and local governments and with other Federal and local 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 program development and implementation process. 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 and implementation process. Procedures are created to assure 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 in the Drafting and Coordination; 306(c)(2)(A)—Plan Coordination; 306(c)(2)(B)—Continued State-Local Consultation; 306(c)(3)—Public Hearings; 306(c)(6)—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...
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eral relationships. It is in the context of these relationships that the require-
ments 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 con-
considering the views of such agencies, States must accommodate 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 manage-
ment program. The purpose of such contacts is to develop mutual ar-
rangements or understandings regarding that agency's participation during program development; (2) Provide for Federal agency input on a timely basis as the program is de-
veloped. Such input shall be provided 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, frequen-
cy, and timing of contacts with relevant Federal agencies, including at-
ttempts to resolve differences, if any; (4) Evaluate Federal comments re-
evived 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 pro-
vided during program development (either by including copies of com-
ments 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 sub-
mission. (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 re-
sources for preservation, conservation, development, enhancement or restora-
tion purposes, including statements of national interest policies or claims re-
lated thereto; (2) Statements of national interests in the planning for or siting of facili-
ties 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 Adminis-
trator shall find that adequate opportu-
nity for full participation by rele-
vant Federal agencies has been pro-
vided if a State has: (1) Contacted relevant Federal agen-
cies; (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 Ad-
ministrator shall determine whether State consideration of relevant Federal agency views, during program devel-

opment, 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 manage-
ment, areas of particular concern, legal authorities, guidelines on prior-
ties of uses, organization, shorefront planning process, energy facility plan-
ing process, the erosion planning pro-
cess, and national interest consider-
atations. (f) Comment. Statutory Citation, Subsection 306(c)(1): Prior to granting approval of a manage-
ment program submitted for approval to a coastal state, the Secretary shall find that: (1) the state has developed and adopted a management program for its coastal zone * * * with the full participa-
tion by relevant Federal agencies. * * * (2) Following are some procedures States should use to insure the effec-
tiveness of their consultation efforts. Officially designated regional or field contacts of relevant Federal agencies should be informed early of the man-
agement program's overall design and specific applicable issues and should be briefed periodically at important stages in the program development process. Policies, criteria for determin-
ing 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 State. Individual consultation, as well as group presentations, should become more substantive and specific as the program moves toward submis-
sion. Individual consultations with rele-
vant Federal agencies should be par-
ticularly useful as the State estab-
ishes its Federal consistency proce-
dures, determines which Federal ac-
tivities, projects, licenses, permits, and assistance it will want subject to the consistency requirements of subsection 307 (c) and (d) of the Act, and de-
cides which Federal interest consider-
ations 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 manage-
ment program, Federal agencies should advise the State agency of the extent of their interests in the de-
velopment 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 as-
stance programs may affect coastal resources. Federal agencies are encour-
eged to provide the State agency with an interpretation of various national is-
terests related to the planning for and siting of facilities that are more than local in nature or the conserva-
tion of various coastal resources. (See section 923.52 for more detail on na-
tional interest.) Federal consistency require-
ments 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 pro-
gram 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 man-
agement program submitted by a State pur-
suit to subsections 305 and 306 of the Act, the mediation provisions of Fed-
eral agencies principally affected by such program have been adequately considered. (1) In addition to the consideration of relevant Federal agency views re-
quired during program development, Federal agencies have the opportunity to provide further comment during the program review and approval pro-
cess. (See Subpart H for details on this process.) Moreover, in the event of a serious disagreement between a rel-
evant Federal agency and designated State agency that relates to those ele-
ments 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 usable. (See § 923.54 for details on mediation.) § 923.52 Consideration of national inter-
esta. (a) General. The primary purpose in requiring, pursuant to subsection 306(c)(8) of the Act, adequate consid-
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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 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).

Pursuant 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 consideration as is applicable by 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 focuses 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>
<thead>
<tr>
<th>Table 1 — Facilities in which there may be a national interest in planning or siting</th>
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<tbody>
<tr>
<td>Uses</td>
</tr>
<tr>
<td>National defense and aerospace</td>
</tr>
<tr>
<td>Energy production and transmission</td>
</tr>
<tr>
<td>Recreation</td>
</tr>
<tr>
<td>Transportation</td>
</tr>
<tr>
<td>Regional water treatment plants</td>
</tr>
</tbody>
</table>

(g) Comment. The sources which specify the national interests to be considered during program development and implementation, as required in subsections (b)(1) and (b)(2) 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; this may be more than local in nature, the Assistant Administrator shall assess (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>
<thead>
<tr>
<th>Resources</th>
<th>Major related Federal legislation</th>
<th>Associated Federal agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water</td>
<td>Federal Water Pollution Control Act</td>
<td>Environmental Protection Agency, Corps of Engineers</td>
</tr>
<tr>
<td>Air</td>
<td>Clean Air Act</td>
<td>Environmental Protection Agency</td>
</tr>
<tr>
<td>Wetlands</td>
<td>Federal Water Pollution Control Act</td>
<td>Corps of Engineers, Environmental Protection Agency</td>
</tr>
<tr>
<td>Endangered flora and fauna</td>
<td>Fish and Wildlife Coordination Act</td>
<td>Department of Interior, Department of Commerce</td>
</tr>
<tr>
<td>Flood plains and erosion hazard areas</td>
<td>Flood Insurance Act</td>
<td>Housing and Urban Development, Corps of Engineers</td>
</tr>
<tr>
<td>Barrier islands and beaches</td>
<td>Coastal Zone Management Act</td>
<td>Department of Interior, Department of Commerce, Corps of Engineers</td>
</tr>
<tr>
<td>Historic and cultural resources</td>
<td>National Historic Preservation Act</td>
<td>Advisory Council on Historic Preservation</td>
</tr>
<tr>
<td>Wildlife refuges and reserves</td>
<td>Pittman-Robinson Act</td>
<td>Department of Interior, Department of Commerce</td>
</tr>
<tr>
<td>Areas of unique cultural significance</td>
<td>National Historic Preservation Act</td>
<td>Department of Interior, Department of Commerce</td>
</tr>
<tr>
<td>Minerals</td>
<td>Mineral Leasing Act</td>
<td>Department of Interior, Department of Commerce</td>
</tr>
<tr>
<td>Prime agricultural lands</td>
<td>Homestead Act</td>
<td>Department of Agriculture, Department of Commerce</td>
</tr>
<tr>
<td>Forests</td>
<td>National Forest Management Act</td>
<td>Department of Commerce, Department of Interior</td>
</tr>
<tr>
<td>Living marine resources</td>
<td>Fisheries Conservation and Management Act, Marine Mammal Protection Act</td>
<td>Department of Commerce, Department of Interior</td>
</tr>
</tbody>
</table>

(1) 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 consideration 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 basic information and data necessary to assess the consistency of their program with the provisions of subsections 307(c), (d), (e) and (f) 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); and
(2) a list of Federal license and permit activities that will be subject to review (see 15 CFR 930.53); and
(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 and, where appropriate, those described in detail in OCS plans (see 15 CFR 930.56 and 930.75); 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 930.81-930.82 and 930.83). (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 and permit activities are subject to review (see 15 CFR 930.94). (c) Comment. The management program should include a brief explanation of the Federal consistency requirements contained in subsections 307(c), (d), (e) and (f) 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 930.89.

§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...
§ 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 the 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;

(b) Media. 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.

(c) 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 interest 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 approved. Evidence of coordination shall be documented in the management program 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 Coastal Zone Stabilization Act of 1976.
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:

(1) The State has (A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone and submitted 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 could be use of a comprehensive, 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 established an effective mechanism 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)(2)(B):

Prior to granting approval to a management program submitted by a coastal state, the Secretary shall find that ***

(3) The state has established an effective mechanism for continuing consultation and coordination and with local governments, areawide, regional, and interstate agencies which have plans affecting 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 30­day 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 therefor. If no action is taken by 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 shall, after any such comments are submitted to it, within such 30­day period, by any local government:

(a) Be required to consider any such comments, and

(b) Be authorized, in its discretion, to hold a public hearing on such comments, and

(c) May make any action within such 30­day 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 may use the OMB Circular No. A-95 (revised) Project Notification and Review System as the required mechanism provided that affected local governments, areawide, regional, and interstate 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 management program 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 with 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 affected local governments, areawide, regional, and interstate 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.
gram require notice to local 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 the determination of local designations, 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 shoreline for recreational purposes; or

(v) Designation of coastal historic resources or natural areas as areas for preservation or enhancement. Examples 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;

(C) Indicating the local government intends to take action which conflicts or interferes with the management program decision; or

(ii) 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.

(1) Comment. The purpose of this notice and comment procedure is to enable all State 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 prohibiting 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 reflect from one of the basic purposes of the Act—that of encouraging States to exercise effectively to achieve the 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 procedures may include a decision by the State management agency to provide public notice and/or meeting facility. In the event a public hearing is held, the affected local government shall provide the required 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
§ 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 (1) completion of the management boundary determination for the entire coastal zone throughout the State and (ii) consideration of the national interest and 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 as an alternative to the development of a comprehensive program. The segments may be developed and adopted in a timely fashion and that segmented management programs reflect accurately the needs and capabilities of 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 segments of the program be devoted to those areas within the coastal zone which most urgently need management programs. Provided, that the state adequately summarizes regional management programs into a single, unified program, and that the unified program will be completed and implemented in a timely fashion.

(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 relative 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 entire 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 segmented program in the form of evidence that (1) the boundaries of the coastal zone for the entire State have been defined (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. These requirements may be presented 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. 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 involved in the planning for and siting of facilities necessary to meet requirements which are other than local in nature; 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. The Assistant Administrator may also waive 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.

(2) 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. The requirement that these items 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 section, 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 area." 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 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" should cover the need to include a section of the program document submitted for approval. 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. This discussion may be in 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 longer 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 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 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 documentation 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.

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<tr>
<th>Section of the act</th>
<th>Associated section(s) of these regulations</th>
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<td>Sec. 306(a) which includes the requirements of sec. 305:</td>
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<td>923.31, 923.32, 923.33, 923.34</td>
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<td>305(b)(2): Uses subject to management</td>
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<td>305(b)(8): Energy facility planning process</td>
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<td>305(b)(9): Erosion planning process</td>
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(c) OCMZ recommends the following format for coastal management program submissions: (i) Summary; (ii) Framework of Program Development; Policies; and (iii) 306 Requirements. OCMZ also recommends the following items as appendices: Documentation of Governmental Consultation and Public Participation; Text 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 should also include a discussion of objectives that will be sought 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 resource 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 will be 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 306(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 306(b)(2), 306(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 306(b)(3), 306(b)(5), 306(b)(7), 306(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 306(c)(1)-306(c)(3), 306(c)(7), 306(d), 306(e) and 306(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, a 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 of 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(b)(1)-306(c)(3), 306(c)(8) and 306(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(e)(4) 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 the 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. Preparations of the DEIS, printing of the document, delivery to EPA, and publication in the Federal Register of notice of availability of the DEIS, notification 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 and the Administrative Procedure Act, 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, 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 requirements 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 of an applicable 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 requested 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 will provide the State in writing, including the reasons therefor. Notice of this decision also will be published in the Federal Register.

§ 923.74 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 statement and 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 305(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 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 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 Federal and/or State agencies and administrative capabilities must be in place.

(c) A third objective is to provide a State with additional time to resolve problems, uncovered during the 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 purpose in section 306, 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 of getting reorganized 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 is 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 section 306 approval can be given; or

2. At any time during section 305 program development, the 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 remediating these deficiencies are specified; and

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 if 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 * * * developed 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, as evidenced by the discharge of deficiencies as specified; 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 * * * (i) identified, after consultation with the Secretary, any deficiency in such program which makes it ineligible for approval * * * (pursuant 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 implementation 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 reasons for, and the specific means and timetable by which the deficiency shall be overcome. The schedule for remediating deficiencies should be sufficiently long to be realistic, given the nature and the specific 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 305 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."

(c) 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) Federal coordination efforts, including 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:

(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)(K) 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)(8)(K)(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 prior to approval. 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 an 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.
PROCEDURES FOR CHANGES TO APPROVED MANAGEMENT PROGRAMS

AMENDMENT

ENVIRONMENTAL IMPACT STATEMENT

NEGATIVE DECLARATION

FEDERAL AGENCY REVIEW

PUBLIC REVIEW, INCLUDING FEDERAL AGENCIES

DECISION BY ASSISTANT ADMINISTRATOR

IF APPROVED:

NOTICE IN FEDERAL REGISTER

FEDERAL CONSISTENCY APPLIES

IF DISAPPROVED:

WRITTEN NOTICE TO STATE

IF APPROVED:

REFINEMENT

REVIEW BY OZCM

DECISION BY ASSISTANT ADMINISTRATOR

NOTICE IN FEDERAL REGISTER

FEDERAL CONSISTENCY APPLIES

IF DISAPPROVED:

WRITTEN NOTICE TO STATE

CONSULTATION WITH FEDERAL AGENCIES, WHERE NECESSARY AND APPROPRIATE

(923.81)

(923.82)
(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 executive order on floodplains management
- 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 the 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 requests 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 the Assistant Administrator in a timely manner of potential changes to the management program.

§ 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 that bear upon the adequacy and viability of a State's coastal management program, provided that such amendments/modifications are consistent with the findings and policies of section 306 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;
3. Changes in techniques (for achieving goals, objectives or policies) that result in significantly altered intergovernmental relationships not reviewed and approved 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 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 a new goal, objective, policy, authority or other part of the management program that is not already contained in the State's approved coastal management program, the State may initiate the formal amendment process pursuant to section 306 of the Act prior to October 1, 1978, without meeting the procedures in subsection 305(b) (7), (8) and (9) and related §§923.14, 923.25 and 923.26 of these regulations. Such amendments will be incorporated into the management program as provided in paragraphs 1 and 2 of §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 awarded pursuant to section 306 of the Act, and such lack of adherence is not justified; or

(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). The Assistant Administrator may recommend to the NOAA Grants Office that section 306 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 withdrawing funds; 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 Assistant Administrator may recommend to the NOAA Grants Office that section 306 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 withdrawing funds; 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 the Secretary determines that:

(1) The State is failing to adhere to and is not justified in deviating from the program approved by the Secretary; or

(2) The Assistant Administrator has notified the State that 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 withdrawing funding include:

(1) 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

(2) In going through the amendment process where the amendment would not be justified; or

(3) 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 the State's 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 commence 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 ninety 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

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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.

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 those of 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:


§ 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 and administer 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 State official, agency or entity 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 financially responsible for all expenditures made under the grant, including expenditures by subgrantees and contractors.

§ 923.83 Allocations.
(a) A State may allocate a portion or program grant pursuant to other State agencies, local governments, areawide or regional agencies, interstate entities, or Indian tribes if the work to result from such allocations 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, the 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(c)(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, a minimal amount of administrative grant funds can be allocated to local governments.

(d) Area-wide agencies. If a State wishes, it may allocate a portion of its administrative grant to an area-wide agency and, absent State law to the contrary, preference shall be given to those agencies recognized or designated as area-wide 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.

(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 a local government, an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a 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 management program approved segment approval will continue to be eligible for section 306 grants until authorization for such funds terminates.

§ 923.35 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 non-structural 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 be claimed in support of 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 (e) are provided and a financial segment approval will continue to be eligible for section 306 grants until authorization for such funds terminates.

(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 the funds. The Form SF-424 application shall describe clearly and briefly the activities that will be undertaken with the funds.

§ 923.36 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 the funds. The Form SF-424 application shall describe clearly and briefly the activities that will be undertaken with the funds.

§ 923.36 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
RULES AND REGULATIONS

§ 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)(5), (b), (b), and (c). 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, 1978.

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 designed to resolve problems identified in the Form SF 424, 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.

(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(e) 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 § 923.99 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.
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of the Assistant Secretary for Community Planning and Development

COMMUNITY DEVELOPMENT BLOCK GRANTS
Eligible Activities
CHAPTER V—OFFICE OF THE ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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 governing eligible activities for the Community Development Act of 1974, as amended. Rules governing the eligibility of activities have been revised as amended. Rules governing the eligibility of activities set forth in §570.207 do apply to the UDAG program.

EFFECTIVE DATE: March 1, 1978.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION: On October 25, 1977 (42 FR 58540) 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, and 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.

Paragraph (d) of §570.200 has been revised to indicate that once the special authority 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. 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 funding of activities 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)(1) of §570.200 has been added regarding special assessments.

A new paragraph (f)(2) establishes a general rule that no special assessments may be levied to 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. As 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 special assessments 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 limit 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 $182.58.

Any contract with a consultant shall provide that each individual consultant, 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.
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 revised definition of the 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 existing 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(a), 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 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 examples 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 Subpart C of local law, as means to implement strategies for spatial decentralization. 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)(x) has been changed to indicate that a neighborhood facility may serve an area locally designated as a neighborhood.

Paragraph (c)(4)(xi) 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)(x)(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. Public purpose equipment used for the final collection process are eligible. This may include incinerators or sanitary landfills 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(n)(k)(i) will not be assisted. 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 to 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.

The final rule permits public services to be provided only in Neighborhood Strategy Areas, which are the terms used in place of Comprehensive Neighborhood Revitalization Areas. 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 the statutory requirement and is intended to eliminate the confusion regarding the eligibility of public services. Notwithstanding the wording 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 also 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 rather than Federal sources. Further, 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 and approval 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 campaigns. 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 applicant’s 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 properties, such as homes, utilities, 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-residential 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 placement 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 the possession of their former owner 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 for-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 Exceptional Shelters. Upon completion of the rehabilitation, the entity may use block grant funds to make repairs and other improvements. 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 this manner. Rather code enforcement must be undertaken as part of a more comprehensive treatment of deteriorated or deteriorating area. This activity should be designed to supplement, but not replace an applicant's routine enforcement activities.

**Other Rehabilitation Assistance**

Block grant funds may be used in a number of ways to assist in the rehabilitation of privately owned properties. Paragraph (c)(2) 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 explicitly 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 for housing improvement, including 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).

**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 this 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.

**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 funds to support 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 other activities in the 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 consideration 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 to which it affects the 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 paragraph, 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 be undertaken, they only 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 authorization 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**

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, 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)(ii) has been revised to refer to Small Business Investment Companies (SBICs). The section has been reorganized pursuant to § 501(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 § 570.201(a)(1) and political activities ineligible under § 570.201(c)(5) 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 excess 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 used in 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 § 570.206. 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 counseling 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 personal property. There are several exceptions. Block grant funds may be used to purchase construction equipment which is a part of a solid waste disposal system as 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 eligible for assistance. Accordingly, several examples are cited; filling a hole in the street, which is repair, is ineligible, whereas resurfacing a street is considered for the purposes of the block grant program to be eligible for 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 judgment 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 started 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. Permitting the use of block grant funds to construct new housing for the handicapped;
2. Reducing 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;
7. Permitting the use of block grant funds 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 inclusion 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 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

§ 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.

AUTHORITY: Title I, Housing and Community Development Act of 1974 (42 U.S.C. § 5001 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 of 1976 (42 U.S.C. § 3555(d)).

II. Subpart C, Eligible Activities is revised to read as follows:

§ 570.200 General policies.

3. Deleting or imposing additional requirements on the use of block grant funds for construction of bike paths, pedestrian malls, and other public works authorized by the statute;

5. Excluding the construction of swimming pools as recreational facilities;

6. Excluding the construction of sports fields, improved recreational areas, and other public works authorized by the statute;

7. Permitting the use of block grant funds 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 inclusion 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.

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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 is also meant to include "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 subpart, 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 multiuse 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 portion of the building that happen to be available on a less than permanent basis; 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 multiuse building and/or facility. For example, a senior center, which is otherwise eligible and funded by HUD, may be assisted under this provision, subject to §570.201(c), if used 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, 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 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.

(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 fees against a parcel of real estate as a direct result of benefit derived from the installation 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.

(2) 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. 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 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 the Federal Register.

(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.

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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. Acquisition 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 options 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, 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 aesthetic quality of facilities and improvements receiving block grant assistance, such as decorative pavements, railings, landscaping, fountains, and other works of art. Public facilities and improvements eligible for assistance under this paragraph include:

(i) 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).
(ii) 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 day basis (such as a group home or halfway house).

(4) Neighborhood facilities. Such facilities may be of either a single purpose or multipurpose nature and be designed to provide health, social, recreational or similar 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 an NSA.

(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; but excluding any facility which is designed solely as a communitywide facility in a new community with a currently projected population in excess of 25,000 population.

(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.

(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 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 § 570.206, 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 and removal 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 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 during 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.

(f) The selection of 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 otherwise requested by HUD. (iii) In case additional information or assurances may be requested from the applicant prior to a determination of eligibility.

(g) 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 finds that emergency conditions exist 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 Agency or sponsor 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.

(2) 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.

(b) 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 community facilities 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, rehabilitation, 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.

(i) 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.

(ii) 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 identified needs of the applicant; and

(iii) The availability of other Federal funds for the activity.

§570.302 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 publically owned structures to preserve 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).

(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 nonprofit organizations involved in rehabilitation of housing, to acquire 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 through the submission of a proposal by 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 subsidies, 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 and modernization 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 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, and 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 temporary operations displaced temporarily by rehabilitation activities assisted under this part. Further information regarding the eligibility of relocation costs is set forth in §570.602.

(c) 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.

(d) 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 on 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 would be eligible for preparation 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 (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 nonprofit entity, a neighborhood-based nonprofit organization, local development corporation, or Small Business Investment Company (SBIC). (1) Applicant Responsibilities. Applicable regulations, applicable to the use of block grant funds, are set forth in § 570.612. Applicants will also be 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, clientelle, 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. 631(d)), including those which are profit making; and


(b) Activities eligible under §§ 570.201-570.203, and § 570.205 and § 570.206. Grant assistance may be provided by a private nonprofit entity, neighborhood-based nonprofit organizations, SBIC's, or local development corporations for activities otherwise eligible for block grant assistance pursuant to §§ 570.201, 570.203, in §§ 570.204, 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, to develop activities 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 in paragraphs (1) and (2), that are to be addressed by the Community Development Program as set forth in §§ 570.205(e) and (f), 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 economic 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 or problems afflicting the present conditions or other methods of communications (in words, maps, illustrations, or other methods of communication) which identify the present conditions or problems afflicting the applicant's strategy for neighborhood revitalization or economic development; and

(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 activities 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 Plan.

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 foreseeable 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 neighborhood service 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;

(b) Development of comprehensive plans. In addition to the planning activities covered in the applicant's Community Development Program, 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 activities 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 Plan.

(c) Comprehensive planning activities. In addition to the planning activities otherwise eligible for assistance under this section, assistance may be 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 meet 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 activities or to city-wide 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 Part

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The new construction or direct financing of a construction of housing is not eligible for assistance under this Part, except as described in §570.207(f).

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 needs particularity for block grant funds, the activity is not considered as a school or educational facility; (excluding railroad spurs assisted 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 those cited in §570.203(b), 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 §570.203(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 of such activities include: 

(i) 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 predominant occupied for governmental purposes, courthouses, police stations and other municipal office buildings; 

(ii) 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)(4) or §570.203(b), include: 

(1) 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) 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 with block grant funds; 

(iii) 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; 

(iv) Airports, subways, trolley lines, bus or other transit terminals, or stations, and other transportation facilities, (excluding railroad spurs assisted pursuant to §570.203(c)). 

(v) 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; 

(vi) 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 collection 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 sewers, 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)(8), 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 personal property 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, cemeteries 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 potholes 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 48, 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 assembly, 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]
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 "§570.200(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(a)(x)(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(c)(x)(i), the reference to "§570.200" is changed to "Subpart C."

(Take 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. 5355(d).)


ROBERT C. EMBRY, JR.,
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-5179 Filed 2-23-78; 2:24 pm]
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 and Urban Development, Department of Housing and Urban Development have been revised to:

- Low- and moderate-income persons to participate in planning, implementation, and assessing the program;
- Provide for improved planning which coordinates housing assistance and community development programs and encourages a comprehensive approach to dealing with urban problems; and
- Rationalize the application process by reducing the frequency of submission of 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:


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 specific program 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 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 felt that this would prevent localities from undertaking comprehensive programs in the worst areas and that it would require designating areas that were too small to 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 planning 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.

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 benefiting low- and moderate-income persons. The rule provides that an applicant who has not demonstrated a high level of benefit to low- and moderate-income persons will 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 benefited 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 rule is based 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(a)(2)(b) of the Act. We 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 benefiting 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 of expenditures which 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. Subparagraph 570.302(c)(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.

**Rules and Regulations**

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 to the quality of programming. In response, this new provision states that the applicant’s determinations that projects 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 benefit low- and moderate-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 low-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 affluent. These comments were considered at length and was decided that a quantified requirement for benefits to low-income persons should not be adopted. The reason is 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 WHEREIN INCOME DOES NOT EXCEED 80 PERCENT OF THE SMSA OR STATE NONMETROPOLITAN MEDIAN, AND THAT AN ADDITIONAL STANDARD WOULD GREATLY COMPLICATE LOCAL PLANNING AND PROGRAMMING. 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 LOW-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 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 PROGRAMMING. THE SPECIFIC COMMENTS WERE:

NUMEROUS LOCAL GOVERNMENTS, PARTICULARLY 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 FROM THE 80 PERCENT RULE MIGHT BE WARRANTED, 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 SUBSIDIES TO LOW-INCOME PERSONS ON AREAS 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 PERCENTAGE 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 LOW-INCOME PERSONS WHO RESIDE IN AREAS WHERE THEY DO NOT CONSTITUTE A MAJORITY.

ON THE OTHER HAND, NUMEROUS PUBLIC INTEREST 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 FEARED THAT THE RULES COULD BE CONFUSING RATHER THAN CLEAR.

THE RULE MAKES CLEAR THAT SUCH AREAS MIGHT NOT BENEFIT COMPETITION, BUT WHICH PRINCIPALLY BENEFIT LOW- AND MODERATE-INCOME PERSONS HAVE 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 CONTINUOUS WITH CENSUS TRACKS, BUT RATHER MAY CONSIST OF NEIGHBORHOODS OR OTHER LOCAL 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 PROJECTS WHICH PROVIDE BENEFITS TO LOW- AND MODERATE-INCOME RESIDENTS ARE DISPERSED WHERE IT IS NOT POSSIBLE OR APPROPRIATE TO TARGET FUNDS TO AREAS WHERE LOW- AND MODERATE-INCOME RESIDENTS CONSTITUTE A MAJORITY.

THE DEFINITIONS OF PROJECTS WHICH BENEFIT LOW- AND MODERATE-INCOME PERSONS IN DELINEATED AREAS HAVE BEEN STRENGTHENED WHERE 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 OF PROJECTS BENEFITTING DELINEATED AREAS.
The first category has been redefined made in response to these comments. 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 could include 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 33½ 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 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 the 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 of 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 rehabilitation, so 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 excluded by this rule.

The provision on completion of Federally assisted 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 low-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 commentators 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 commentators 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 not 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-
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. Some recommended that HUD provide extensive comment from 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. The latter groups generally supported the rule as a marked improvement over previous regulations, but many wanted it extended.

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. It was decided that submission of citizen participation plans by all communities should not be required, primarily because HUD does not have sufficient staff resources to review adequately all of the thousands of plans submitted. It was felt that HUD's limited staff resources can be used more effectively in responding to 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 regulations call for all communities to establish formal citizen participation structures, regardless of the effectiveness of existing arrangements, was also considered. We believe that the exact form of the citizen participation 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 community-wide 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...
ment of performance. The provision 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 subparagaph also suggests other roles citizens may play in program implementation.

Several commenters requested clarification as to what is meant by citizen involvement in program implementation. In response, subparagraph (2) 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 shall be made available for citizen review upon request. The rule has been changed to require 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 both locations conveniently located for persons affected by the program and accessible to the handicapped.

Many commenters objected to the provisions in the proposed rule that require 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 (e.g., 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. We agreed 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 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 or authority on 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 public hearings on the applicant's performance in order 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. Paragraph (d) on scope of participation already states that citizens shall be involved in subsequent amendments and other changes to the local option 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 concern that this would greatly increase the paperwork requirements and result in an ineffective, as well as the comment that these provisions would encourage more effective programing. However, numerous local officials expressed concern that this was not adopted because there is no centralized pattern of neglect of the needs of low-income persons in favor of moderate-income persons, and that would 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 and respond 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 will be a part of the neighborhood revitalization strategy, where appropriate, or the communitywide strategy.

The housing component has been changed so that it is a comprehensive statement identifying the 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, owner and tenant 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 but also from other policies and practices.

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 of criteria 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 neighborhood 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 did 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 steps 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 responsibility. 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 the availability of 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.
RULES AND REGULATIONS

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 may not receive sufficient 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 percent of all families assisted be very low-income. Similarly, the percent of all families assisted be very low-income. Similarly, the percent of all families assisted be very low-income. Similarly, the percent of all families assisted be very low-income. Similarly, the percent of all families assisted be very low-income. Similarly, the percent of all families assisted be very low-income. 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in accordance with HUD Handbook 13901. 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, DC 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 plans.
  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-96 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. 95-125); and Sec. 3(d), Department of Housing and Urban Development Act (42 U.S.C. 3335(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 clearinghouses 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 discretion 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-

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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 § 570.201 (b). Moreover, certain with HUD programs are designed to focus on areas of concentrated community development activity, for example, urban homesteading, and section 8 substantial rehabilitation special procedures programs include a residential 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, 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) Comprehensive 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 multiyear project in 24 CFR § 883. The environmental review of such project should take into account the relationship between components, activities, and the cumulative environmental effects of activities.

(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, which are block grant assisted physical development programs are being carried out in a concentrated manner, for example, public services pursuant to § 570.201 (b). Moreover, certain with HUD programs are designed to focus on areas of concentrated community development activity, for example, urban homesteading, and Section 8 substantial rehabilitation special procedures programs include a residential community development activity, for example, urban homesteading, and Section 8 substantial rehabilitation special procedures programs include a residential neighborhood strategy area. This area can be met.

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(e) 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, which are block grant assisted physical development programs are being carried out in a concentrated manner, for example, public services pursuant to § 570.201 (b). Moreover, certain with HUD programs are designed to focus on areas of concentrated community development activity, for example, urban homesteading, and Section 8 substantial rehabilitation special procedures programs include a residential neighborhood strategy area. This area can be met.

(f) 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, which are block grant assisted physical development programs are being carried out in a concentrated manner, for example, public services pursuant to § 570.201 (b). Moreover, certain with HUD programs are designed to focus on areas of concentrated community development activity, for example, urban homesteading, and Section 8 substantial rehabilitation special procedures programs include a residential neighborhood strategy area. This area can be met.

(g) 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, which are block grant assisted physical development programs are being carried out in a concentrated manner, for example, public services pursuant to § 570.201 (b). Moreover, certain with HUD programs are designed to focus on areas of concentrated community development activity, for example, urban homesteading, and Section 8 substantial rehabilitation special procedures programs include a residential neighborhood strategy area. This area can be met.

(h) 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, which are block grant assisted physical development programs are being carried out in a concentrated manner, for example, public services pursuant to § 570.201 (b). Moreover, certain with HUD programs are designed to focus on areas of concentrated community development activity, for example, urban homesteading, and Section 8 substantial rehabilitation special procedures programs include a residential neighborhood strategy area. This area can be met.

(i) 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, which are block grant assisted physical development programs are being carried out in a concentrated manner, for example, public services pursuant to § 570.201 (b). Moreover, certain with HUD programs are designed to focus on areas of concentrated community development activity, for example, urban homesteading, and Section 8 substantial rehabilitation special procedures programs include a residential neighborhood strategy area. This area can be met.

(j) 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, which are block grant assisted physical development programs are being carried out in a concentrated manner, for example, public services pursuant to § 570.201 (b). Moreover, certain with HUD programs are designed to focus on areas of concentrated community development activity, for example, urban homesteading, and Section 8 substantial rehabilitation special procedures programs include a residential neighborhood strategy area. This area can be met.

(2) The environmental assessment of a project approved under Subpart C of 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 has 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 with 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 commitments for 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 implementing multiyear projects. An application for such projects must be submitted by the applicant to HUD for approval. Upon 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. However, the provisions of Subpart C of Part 58 must be complied with prior to the release of funds by HUD. 

(6) 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), 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 ensure 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.

(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 unemployment statistics, 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 meet 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, past expenditures, 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 standards shall apply:

   (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.

   (ii) A project designed to attract or retain neighborhood commercial facilities which provide essential services to low- and moderate-income residents in those areas.

(3) Activities necessary to complete projects which principally benefit low- and moderate-income persons.

(a) Removal of architectural barriers pursuant to § 570.201(k); such projects may be assumed to principally benefit low- and moderate-income persons if the persons expected to be employed are defined as low- and moderate-income persons 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.

(b) A senior center which is used principally by persons of low- and moderate-income.

(c) 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 persons 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.

(d) 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 based, 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 75 percent of the program funds applied for shall be used for projects and activities which principally benefit 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 where 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.

Projects which 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 activities which are necessary to implement 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. Authorised 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.

(4) Projects designed to meet needs having a particular urgency. These

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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 provide the funds 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 funding.

(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 benefiting 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 responsibility 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 considered principally benefiting low- and moderate-income persons.

(h) Mitigating adverse effects. Where the program will result in direct or indirect displacement or other hardships to the residents of 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 a description of 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 its 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 parties.
(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 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;
(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 considered principally benefiting low- and moderate-income persons.

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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 non-profit entities.

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 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.

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.

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 after the publication of the notice that the application has been submitted to HUD, as described in paragraph (f)(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.

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.

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 residents 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, so that it may be provided either by the applicant directly or through arrangements with public or private entities.

Adequate information. The applicant shall provide for full public access to program information and affirmative efforts to make available information 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 and project area 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, and;
(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 the section.

(v) A summary of other important program requirements.

The applicant shall provide for full and timely disclosure of its program orders 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 materials;
(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 State and required by HUD, and the proposed and approved application for the current year;

(vi) Copies of the regulations and issues concerning 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-85 review process.

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)(3) 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.

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.

(ii) 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.

(iii) To provide local option activities, or if it chooses to identify in its application activities to eliminate redlining.

(iv) To provide for citizen participation processes and procedures for maintaining and preserving viable neighborhoods and for upgrading neighborhoods affected by blight and deterioration.

(v) To provide for the acquisition of vacant land at fair market value, which is necessary for the accomplishment of the rehabilitation goals, support the anticipated physical improvements and the block grant and other funds to be provided.

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RULES AND REGULATIONS

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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 householders, applying 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 project and mitigate any adverse effects resulting from block grant funded activities.

(3) Economic development. A description of the applicant's strategy for economic development 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 benefiting, 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 projects involving multiyear funding commitments pursuant to §570.423(b). The Community Development Program Plan shall consist of the following:

(a) Project summary. The following information shall be provided for each project and activity to be commenced during the project year:

(i) The name of the project or activity;

(ii) 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;

(iii) The number and types of permanent jobs created resulting from block grant expenditures in specific categories and the anticipated resources available.

(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).

§570.305 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 Comprehensive Development and Housing Plan, or an amendment thereof shall be submitted with the application in accordance with §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 project year:

(i) The name of the project or activity;

(ii) 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;

(iii) The number and types of permanent jobs created resulting from block grant expenditures in specific categories and the anticipated resources available.

(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).
RULING REGULATIONS

...ations, including provisions of a reason-

able 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 opportuni-
ties and avoid undue concentrations of

assisted persons in areas containing a

high proportion of lower-income per-

sons, and which further fair housing

and assure the availability of public

facilities and services adequate to sup-

port housing facilities. In addition, all

communities are expected to share in

providing expanded housing opportuni-
ties for lower-income persons and to

participate in areawide solutions of

housing problems through promotion

of spatial deconcentration of housing

opportunities for lower-income per-

sons.

(2) Use. The HAP is not only a re-

quirement for assistance under this

Part, but it serves as the means for

HUD to distribute assisted housing re-

sources to the HAP-eligible areas so

that 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 envi-

ronment for all persons, but principal-

ly those of lower income. The HAP

should facilitate the reduction of the

isolation of income groups within com-

munities and geographic areas, affir-

matively further fair housing and pro-

mote the diversity and vitality of neigh-

borhoods.

(3) Responsibility of applicant. Ap-

plicants are responsible for implemen-
tation of the housing assistance plan in

an expeditious manner. This in-

cludes the timely achievement of all

goals for assisted housing and particu-

larly those which address the needs of

families and large families requiring

rental assistance. Applicants are ex-

pected to take all actions within their

control to facilitate the implementa-
tion of an approved housing assistance

plan including those actions specifi-
cally described in §§ 570.306(b)(3)(ii)

and (b)(4)(ii), as well as the develop-
mment of Section 8 housing when notifica-
tions 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 submi-
ted to HUD after the publication date of

these regulations but prior to August 1, 1978 shall be designed to

complete the requirement that hous-

ing 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 (el-

derly and non-elderly) and tenurally

(III) A Hold Harmless Entitlement

applicant submitting a HAP after August 1, 1978, not proposing to

apply for a grant under Subpart P 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 ap-
pproved HAP's. (Effective August 1,

1978.) Applicants are not relieved of

their responsibilities to continue to ad-

dress goals established to meet the

needs for assisted housing identified in

prior program years. Accordingly, ap-

plicants who had approved component

goals designed to address the needs of

a particular tenure type (owner or

rental) and household type (elderly,

handicapped, family and non-elderly

individuals, or large family), or hous-

ing type (existing, substantial rehabili-
tation, or new construction), or any

combination of the above, which have

not been substantially met, shall in-
clude 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 ap-
plicant which has identified a substanc-
tial need, and established goals for

families and large families, but none-
theless has met only the goals or a sub-
stantial portion of the goals, estab-
lished for elderly households shall
meet the goals established for families

and large families before providing ad-
ditional assistance to elderly house-
holds.

(b) Housing Assistance Plan Con-
tent. The application shall contain a

housing assistance plan which in-

cludes:

(1) Housing Conditions. The appli-
cant shall describe the condition of

the existing housing stock in the com-
munity by providing a statistical pro-
file by tenure type (owner and renter),

which describes housing conditions by

number of units in standard condition,

and in substandard condition. For reha-

bilitation program is proposed as

part of the applicant's strategy state-

ment as set forth in § 570.304(b), the

number of units which are suitable for

rehabilitation shall be stated. Esti-

mates shall be made of vacancy rates

for non-seasonal available units in

standard condition, using the best esti-

mate 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 per-

sons.

The data for such description gene-

rally 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, re-

gional, or State planning agencies; pro-

vided that the deviations from esti-

mates 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 which does not

have an approved AHOP shall use the

same census, areawide, or State data

unless more recent, generally available
data exist for an individual applicant.

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(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 period. Such estimates shall 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 by all minority households), who could reasonably be expected to reside in the community.

(A) (Effective August 1, 1978.) An applicant residing 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. If information is available from Federal, State, and local sources, such estimates shall also be provided for any identifiable segment of the total group of lower-income households in the community. 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 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 Household 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 x SMSA Lower-Income Household Percentage - Total required number of lower-income households: 5,000 x 0.4 = 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 Household Percentage) - Gross Estimate of Lower-Income Households Expected to Reside: (2,000 - 1,000) / (1 - 0.4) = 1,067.

Step 6. City W households expected to reside = 1,067 / 3 = 356.

(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 during the three year period. If information is available from Federal, State, areawide, or local sources, such estimates shall be provided for any identifiable segment of the total group of lower-income households in the community. Such summary shall include but be 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 appropriate to such 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-
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graphic quadrants in those jurisdictions where a census tract includes a substantial area, such as an entire community. General locations for substantial area, such as an entire cant proposes assisted housing re-

tions where a census tract includes a graphic quadrants in those jurisdic-

housing projects shall contain at least one site which conforms to the site and neighborhood standards estab-

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 ac-

tions determined necessary, on the basis of findings of past performance reviews pursuant to Subpart O of these regulations, to achieve the hous-

ing assistance goals and shall set forth a timetable for such actions. In addition, applicants anticipating diffi-

culty in achieving goals in newly pre-

pared HAPs shall set forth actions re-

quired to achieve those goals. The ac-

tions may include, but are not limited to:

- (A) acquisition of sites and provi-

sion of site improvements for the de-

velopment of assisted housing;

- (B) adoption or modification of local or-

dinances and land use measures to fa-

cilitate the development of assisted hous-

ing including institution of local referendums, where necessary;

- (C) issuance of appropriate zoning

changes, building permits, utility con-

nections and similar administrative re-

quirements; (D) formation of a local

housing action program to encourage developers to ini-

tiate and execution of an agreement with a housing authority having powers to provide assisted housing within the jurisdiction of the applicant; (E) removal of local resi-

dency preferences for assisted hous-

ing; (F) promotional and assistance ac-

tivities to encourage developers to ini-

tiate 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 develop-

ment, such as tax abatement, waiver of fees and other administrative costs.

(iv) 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 hous-

ing program. The annual action pro-

gram shall:

(i) Specify, by tenure type, house-

hold type, and housing type, a realistic annual goal for the number of dwell-

ings units or persons to be assisted, in-

cluding 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 in-

cluding those actions described in paragraph (b)(3)(iii) of this section.

(c) Standards and criteria for ap-

proval of HAPs. The following stan-

dards and criteria shall apply to the

reviews and determinations of accept-

ability of housing assistance plans and shall be effective as of the date of pub-

lication of these regulations except as otherwise noted:

(1) Goals for assisted housing—(i) Proportionality. The three year hous-

ing 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 house-

hold types, by tenure type. Certain ad-

justments to this requirement are per-

mitted as follows:

(A) HUD may grant an exception from this requirement when an appli-

cant documents special needs arising from displacement of significant num-

bers of households of a particular size; natural disasters; meeting the housing requirements of section 106 (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-ap-

proved AHP; or

(B) (Effective August 1,1978.) Appli-

cants required to emphasize a particu-

lar household type or types pursuant to §570.306(a)(5) shall make no down-

ward adjustment in the percentage represented by such household type, but the percentage represented by other household types may be adjust-

ed downward as necessary. For exam-

ple, an applicant which has disproportionately met the needs of elderly households in prior years would not be permitted to make any downward ad-

justment to the percentages represent-

ed by family and large family house-

holds, but may be required to reduce the percentage represented by elderly households to zero.

(ii) Tenure types. The types and quan-

tities of housing assistance pro-

posed by tenure type (owner and renter), shall be appropriate to meet-

ing indentified needs of both renters and owners. In this regard, unless a community can demonstrate that it can meet the needs of households ex-

pected to reside through assistance programs for homeowners, such needs shall be assumed to represent needs for rental units.

(iii) (Effective August 1, 1978.) Mini-

mal goals. The goals must directly ad-

dress known needs for housing assis-
	ance and contain a sufficient number of units to permit practical and eco-

nomically feasible housing develop-

ment. For applicants with are within the jurisdiction of a HUD-approved AHP, HUD will accept the goals in-

cluded therein. All other applicants shall propose a three-year housing as-

sistance goal which represents assis-
	ance for at least 15 percent of the total income persons to be assisted. The applicant can demonstrate to the satisfaction of HUD that such a goal would be infeas-

ible. The standard that housing assis-
	ance plans with only minimal housing assistance goals are plainly inappropri-

ate recognizes that communities with very substantial housing assistance needs have a responsibility to propose substantial housing assistance goals and that goals should reflect the desir-

ability of meeting a significant per-

centage of identified needs at an early date.

(iv) Vacancy rates. In establishing goals for assisted housing, the appli-

cant shall consider the vacancy rate established pursuant to §570.306(b)(1) and shall estimate the number of such vacant units which would be adequate to meet the needs of lower-income households.

(2) Requirements. In the 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 approriate size, cost, and type to meet the identified housing assistance needs for rental units for lower-income households goals for housing assis-
	ance shall emphasize a program of new construction of rental units for households of lower-income. For ex-

ample, an applicant with a significant number of lower-income households expected to reside in the community and a less than adequate rental vacan-

cy rate, would be expected to empha-

size a program of new construction of rental units to address this need. How-

ever, this does not preclude the use of a vehicle such as the Section 8 Exist-

ting Housing program to address the needs of households currently 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. This section shall not be inter-

preted to imply that a lower-income person for rental units, goals for housing assistance shall emphasize a program of existing housing for per-

tsions 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 comply with 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.

(iii) 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 §532.109, and be occupied by lower-income households. Any units proposed to be rehabilitated under Federal assistance, shall upon completion meet the standards of the applicable Federal program where they exceed Section 8 Existing Housing Quality Standards. [40 FR 38056, Aug 1, 1975] 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 deconcentra-

EFFECTIVE AUGUST 1, 1978, THE CERTIFICATION REQUIREMENTS OF §570.302(c)(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.

(5) It will comply with the regulations, 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, or 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 101-18.604. The applicant will be responsible for conducting inspections to ensure 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 be discriminated against on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or to different or separ ate treatment of such persons on account of race, color, religion, national origin, sex, or source of income; and

(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 area of the project and to the greatest extent feasible opportunities 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 regulations at 24 CFR Part 42, and § 570.602(b).
(2) Provide relocation payments and offer relocation assistance as described in Section 205 of the Uniform Relocation Assistance Act to all displaced families and individuals, and the provision of brokerage services.

(o) It will:
(1) Comply with Title II (Uniform Relocation Assistance) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD Implementing regulations at 24 CFR Part 42 and § 570.602(a); and
(2) Provide relocation payments and offer relocation assistance as described in Section 205 of the Uniform Relocation Assistance Act to all persons displaced 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 treatment of such persons on account of race, color, religion, national origin, sex, or source of income.

(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 comply with the flood assurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L. 93-234, 87 Stat. 333, 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.

(s) It will, in connection with its performance of environmental assessments under the National Environmental 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.

§ 570.398 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 fiscal or 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 a copy of any application 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 clearingshouses 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 clearingshouses 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. If the requirement is waived by a clearinghouse, the applicant shall provide the clearingshouses a period of 45 calendar days to review the completed application and transmit to the applicant any comments or recommendations. Clearingshouses 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 inconsistency.

(d) Application modification during clearinghouse or HUD review. An applicant which revises its application while it is under review by a clearinghouse or 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); and

(ii) The funds requested do not exceed the entitlement amount; and

(iii) The funds requested do not be limited to, the following matters contained in the application and the grantee performance report, or derived from monitoring:

(l) 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) Appropriate priority 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;

(b) Applicant's capacity to carry out the program proposed as evidenced by its previous performance record; and

(c) Compliance with the requirements of this Part and other applicable laws and regulations.

(b) 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 the 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 the three-year project summary to HUD at the same time the proposed program amendment is submitted. 

(b) Housing Assistance Plan Amendments. The recipient shall submit an amended community development plan summary to HUD at the same time the proposed program amendment is submitted. 

§570.306 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 and disaster activities) pursuant to §570.600 and disaster assistance pursuant to 24 CFR §55.6. 

(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. 

(5) The recipient proposes a revision of the general locations for assisted housing established pursuant to §570.306(b)(3)(ii) or §570.306(b)(4)(i); 

(6) 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. 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 shall 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 to have been approved. 

(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 Community Development Plan shall be submitted to the recipients for review and comment.
munity Development Program, community development plan and Housing Assistance Plan require citizen participation. However, are required only when prior HUD approval of application amendments is required. Citizen participation requirements do not apply, however, to disaster activities.

4.45 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(b).

(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 benefiting. The report shall include an analysis of the persons actually benefiting 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 report participation in the program year in which it was approved and provide cumulative information on the following:

(i) The administrative unit having lead responsibility;

(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.

(3) persons actually benefiting from activities carried out under the program.

(b) Equal opportunity. The applicant shall present evidence of compliance with the certifications required by §570.307.

IV. Conforming and technical changes are made to Part 570 as follows:

§ 570.400 [Amended]

1. In §570.400(a), the reference to "§570.303(a) and (b)" 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(e), 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), (i), (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(e)" 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 paragraphs (d) and (f)."

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(c), 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 "§570.303," "§570.305," "§570.306," and "§570.308," 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 "§570.300(d)" is changed to "§570.305."

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(c)(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, 570.508(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. 3538(d)].


ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-5180 Filed 2-23-78; 2:24 pm]
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

COMMUNITY DEVELOPMENT BLOCK GRANTS

Small Cities Program
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 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:


SUPPLEMENTARY INFORMATION: On November 18, 1977, the Department of Housing and Urban Development published in the Federal Register (42 FR 59954) 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. 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 located at §§570.423 and §570.427 respectively.

Subsection (e) established a system for division of funds between the Comprehensive and Single Purpose elements based generally upon 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 a precise determination.

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 and other parameters, initially 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 preapplication materials 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 documents 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 performance for both Comprehensive and Single Purpose 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 recipients 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. Several comments proposed that 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 participating 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 purposes 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 accumulation 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 areas 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 section (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 made by the State or joint applications.

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 (e) 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 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 to 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 has been 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 such activities be approved by the Department, 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 (e).

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 accomplishment of HAP goals without regard to financing or moderate-income housing, instead of just actions to facilitate the accomplishment of HAP goals. We have added development and/or implementation of a section 101 housing and land use element in the context of 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 individuals or agencies to define housing need would not supply us with standardised, 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 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. This concept 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 weightings of absolute numbers and proportion in past. This is one of 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 and proportion in design a program that addressed six factors in §570.426 (a-d). Most commenters suggested elimination of the very concept and assigning points to low- and moderate-income persons. We have decided to maintain 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. The criteria 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 were developed to enable a community to define its own needs and develop a program to address those needs.

Various comments were made concerning the criteria dealing with the impact of the program on other Federal programs or policies. The emphasis on 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 not the double weighting 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 used to benefit these two groups. 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 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 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 criteria 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, and non-controlled businesses, rather than 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 commented 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 the actual differences between 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 meet their specific 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 50 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.

§570.423 APPLICATIONS FOR COMPREHENSIVE GRANTS

Most comments on this Section, formerly §570.428, related to the Citizen Participation date that each, the entitlement program which were incorporated by reference for the Small Cities Comprehensive Program. These Citizen Participation requirements are being revised and 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 the 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 and submit 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 any funding, rather defining, as §570.427(a) has been defined, “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 single activity or a number of activities. Section 570.429(a) defined it as a single activity or project, and Section 570.429(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. The 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 the 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 distinction and 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 determination.

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 their jurisdiction and should not be relieved of their jurisdiction. Several commenters were also received suggesting that State programs be included in §570.430(d)(4). State program recognition is provided for within (h)(1)(B).
RULES AND REGULATIONS

§ 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 method of calculating 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 since 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 that 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, applications 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 these needs, 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 commenters 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 commenters 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 calculation 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 paragraph (c)(2). 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 eliminated be 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 not-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 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 "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 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).

§ 570.435 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 compliance with the requirements of this section. 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 applicants invited to submit a full application.

§ 570.436 PROGRAM AMENDMENTS FOR SINGLE PURPOSE AND COMPREHENSIVE GRANTS

This Section was previously designated §570.436. A comment 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 pre-HUD approval for amendments to a Housing Assistance Plan is required.

§ 570.438 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 no more than 45 days prior to 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 area wide or State plans, because HUD has no means of determining the adequacy of the area wide or State plans in question. However, Area Offices are required by CPD Notice 76-5, 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 issue cannot be reached.

Numerous provisions of the Small Cities Program have been substantial-ly 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 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. Accordingly, effective this date, 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.

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570.431 Citizen Participation Requirements for Single Purpose Grants for Immense 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. 3555(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 HUD has adopted to implement the Small Cities Program. Funds for this program are those provided through the metropolitan and nonmetropolitan balances described 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, 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)(1)(2) and (3). Applications may be submitted individually, jointly, 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 types of programs—Comprehensive and Single Program Objectives.

(e) Distribution of funds between comprehensive and 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 55 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 for each program and rating system. These will be divided among the eligible grantees, thereby permitting HUD to rate and rank the applications in the same manner that they can be applied to the Small Cities Program. The HUD Environmental Review Procedures contained in 24 CFR Part 58 also apply to this Subpart.

(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 that the Single Purpose Grant, unless a waiver is provided by the Regional Administrator, but in no instance shall a waiver be provided if the State or county may apply for both a Single Purpose and a Comprehensive Grant. An applicant 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 reviewed by metropolitan, nonmetropolitan, and Indian tribes. The decision made by HUD to rate and rank 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 area-wide 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 public. HUD may establish deadlines for submission of preapplications by publication of a Notice in the Federal Register.

(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 the 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 monotary 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 if the 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...
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 households and in the advancement 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 preapplication, will be submitted by only the lead unit of government designated as the lead unit for administrative purposes. The lead unit of government shall be considered the applicant.

(d) Limits on applying for assistance. A unit 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 and shall be consistent with any other HAP applicable to these jurisdictions.

(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 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 capacity to undertake the proposed program.

(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 104(a) 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 meeting goals established under an approved Housing Assistance Plan;
(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 by community activities, the community’s ability 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 infrastructure;
(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’s inquiry or audit.

§ 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.

After each of the four criteria selected by an applicant has been rated and values assigned, the total is added

**(c) Program factor—Impact of the proposed program (400 points).** Each applicant shall select four program design criteria from among the following:

1. **Housing efforts.** Twenty points for each of the following criteria will be awarded to an applicant that can demonstrate outstanding performance in:
   - (i) Providing housing for low- and moderate-income persons.
   - (ii) Providing opportunities for small businesses, enterprises, and minorities on a regional basis.
   - (iii) Meeting its large family housing needs.
   - (iv) Carrying out housing assistance needs in relation to that proportion of need.
   - (v) Enforcement of a Fair Housing Ordinance.

2. **Local equal employment and entrepreneurial efforts (50 points).** 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 minority employees in the SMSA for metropolitan applicants, or within the SMSA for metropolitan applicants.

3. **Housing Opportunity Plan (50 points).** Fifty points will be awarded to any jurisdiction participating in a HUD-approved areawide Housing Opportunity Plan.

4. **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.

(1) 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 Form 424, as prescribed by OMB Circular A-102; (2) A program narrative statement which consists of the following:

(i) 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 description of the proposed activities and general locations for proposed new or rehabilitated housing assistance.

(b) Coordination with applications for CDBG Entitlement Grants. Where possible, HUD will utilize information submitted with a hold-harmless entitlement application for a grant that will be made available for a CDBG grant. Performance determinations made for CDBG grants will be credited towards the performance goals of the CDBG grant. Furthermore, the performance of the CDBG grant will be used to determine whether the overall performance of the proposed program meets the requirements for the CDBG grant. The purpose of the evidence is to achieve the purpose of the program as defined in Title VI of the Civil Rights Act of 1964. The purpose of the evidence is to achieve the purpose of the program as defined in Title VI of the Civil Rights Act of 1964.

§ 570.426 Applications for Comprehensive Grants.

(a) Application requirements. The application requirements contained in Sections 570.303, 570.304, 570.305, 570.306, and 570.307 of Subpart D of this Part, shall apply to applications for Comprehensive Grants.

(c) 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.

§ 570.427 Single purpose program general requirements.

(a) General. The single purpose program must meet the criteria for CDBG Entitlement Grants.

(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 ceiling.

(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.

(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 project........... 200
(f) Benefits to low and moderate-income persons............. 200
(g) Performance: Highest score possible is 100
(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, and joint preapplications in which a county participates, 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, as identified in 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 available 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 result 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 (20 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) 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:

<table>
<thead>
<tr>
<th>Project impact</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>No impact</td>
<td>0</td>
</tr>
<tr>
<td>Minimal impact</td>
<td>50</td>
</tr>
<tr>
<td>Moderate impact</td>
<td>100</td>
</tr>
<tr>
<td>Substantial impact</td>
<td>200</td>
</tr>
</tbody>
</table>

(f) Benefit to low- and moderate-income persons (200 points). This factor will measure the benefit to low- and moderate-income persons. Applicant's scores 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 of 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-five points will be awarded for each of the following criteria: 25 points can be awarded for each of the following criteria: (a) 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; (b) Dispersal, by race, in occupancy of its existing assisted housing; (c) Meeting its large family housing assistance needs in relation to that proportion of the population; (d) Carrying out assistance goals from previous HAP(s); (e) Enforcement of a Fair Housing Ordinance.

(2) Local equal employment and entrepreneurial efforts (50 points). 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 minority businesses residing within the county for nonmetropolitan applicants, or within the SMSA for metropolitan applicants.

(h) Other (125 points). Twenty-five points will be awarded for each of the following criteria: (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.

§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:

(i) Standard Form 424, as prescribed by OMB Circular A-102.

(ii) A brief description of the applicant, 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 or economic conditions) that the activity will address.

(iii) A description of the activity(ies) to be carried out with assistance under this Subpart and an estimate of the cost.

(iv) A statement describing the impact the activity will have on the identified problem.

(v) 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 helped and the number of such persons that meet the definition of low and moderate income.

(vi) A description of activities otherwise 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) 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 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 improved 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:

(i) The activity or activities to be undertaken to meet the community development needs and objectives;

(ii) The estimated cost of each activity; and

(iii) 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 that identifies the short- and long-term strategies for meeting the community's housing needs and objectives. 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 provided for 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 in the future.

(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 § 570.307(b)(2)(vii).

(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 the program (except for existing units), by tenure, and by household type. The goal should address relative proportions of need so far as practicable while providing for the development of feasible projects.

The applicant shall describe the actions it plans to take to further 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 paragraphs (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) and projects 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 582.109, upon completion. Rehabilitation 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
RULES AND REGULATIONS

(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;

(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;

(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 § 570.426, the Area Manager may, at any time, invite a full application for funds available under this Subpart B 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 available 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 original preapplication amount; (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 action 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(d) 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) if on-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 planning costs will be subject to HUD approval of the application. Only those costs associated with the actual cost of preparation of the application may be assisted. No instances of planning or preparation fees will 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 § 570.430. 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 modify or cancel an approved program 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 under, 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 ruling on the 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 non-compliance 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 "§570.409(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 "§570.402(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)(ii)" 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.

(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)).)


ROBERT C. EMBRY, JR., Assistant Secretary for Community Planning and Development.

[FR Doc. 78-5181 Filed 2-23-78; 2:24 am]
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

LOANS FOR HOUSING THE ELDERLY OR HANDICAPPED
SUPPLEMENTARY INFORMATION:
FOR FURTHER INFORMATION

supervision of section 202, pursuant to which the Department has decided to decentralize program authorization and responsibility to field offices. This final rule amends section 202 loan fund authorizations specifically to require—greater predictability in the application process. The Department has decided to implement the simplified, compared to the January 28, 1977 at 42 FR 57439, November 2, 1977, new cost limits to section 202 projects. There was opposition. The Department has decided to decentralize program author­ ity and responsibility to field offices.

In section 202 programs the Department has decided to decentralize program author­ ity and responsibility to field offices. This final rule amends Part 885.410 is incorporated in this final rule.

According to the proposed rule, only sixteen comment­ ers objected to continuing the site control requirement—greater predictability in the application process. The Department has decided to implement the 12. USC 1701q). Subsequent to publication of that final rule, 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. 95-128, was enacted on August 3, 1976, making certain changes in the provi­ sions of section 202, pursuant to which the Department published a final rule in 1976 at 41 FR 8314, a final rule amending Title 24, Part 885, to provide a program of direct loan finan­ cing for projects for the elderly or the handicapped. This final rule decentralizes the responsibility for reserving section 202 loan fund author­ ity 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.

FEDERAL REGISTER, VOL. 43, NO. 41—WEDNESDAY, MARCH 1, 1978

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

Title 24—Housing and Urban Development

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 pro­ cedural 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 author­ ity 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.

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 changes in the proposed rule, from the proposed rule, are discussed below:

1. Twenty respondents addressed the basic decentralization question, of which 17 favored decentralization (including those who would have preferred decentralization only to the Regional Offices) while only three noted opposition. The Department has de­ cided to decentralize program author­ ity and responsibility to field offices.

2. On the issue of priority for proj­ ects 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)(1)(i) 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 comment­ ers objected to continuing the site control requirement—greater predictability in the application process. The Department has decided to implement the

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 construc­ tion 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 gen­ erally 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 incorporat­ ing the section 8 application require­ ments 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 require-
ments of the section 202 program shall have met the requirements for hous-
ing assistance payments under the sec-
tion 8 Housing Assistance Payments
program as provided in the U.S. Hous-
ing Act of 1937, as amended.

The Department has determined that this Final rule will not have a sig-
nificant impact upon the quality of the
environment. A Finding of Inap-
licability with respect to the National
Environmental Policy Act of 1969 has
been made in accordance with HUD
procedures. A Finding of Inaplicabil-
ity will be available for public inspec-
tion during regular business hours in
the Office of the Rules Docket Clerk,
Office of the Secretary, Room 5218,
Department of Housing and Urban

It is hereby certified that the eco-
nomic and inflationary impacts of this
final rule have been carefully evaluat-
ed 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 Pro-
cessing Applications for Section 202 Fund
Reservations

885.200 Allocation of loan fund authority.

885.205 Announcement of fund availability
and invitations for applications for sec-
tion 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 reser-
vations.

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
posting.

885.420 Loan disbursement procedures.

885.425 Completion of construction or sub-
stantial rehabilitation, cost certification
and approvals by HUD.

Authoritative: Sec. 7(d), Department
of Housing and Urban Development Act (42
U.S.C. 5335(d)).

Subpart A—General Policy

§ 885.1 Purpose and policy.

(a) Purpose. The purpose of the pro-
gram described in this Part is to pro-
vide 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 handi-
capped families and individuals. The
housing projects shall provide the nec-
essary services for the occupants,
which may include, among others,
health, continuing education, welfare,
information, homemak-
er, counseling, and referral services,
as well as transportation where necessary
to facilitate access to these services.
The management plans shall address
management and maintenance respon-
sibilities of the Borrower as well as
the delivery of necessary services for the
occupants.

(b) General Policy. A loan made pur-
suant to this Part shall be used to fi-
nance the construction or substantial
rehabilitation of residential projects
for the elderly or the handicapped.
Consistent with Congressional direc-
tives stated in the Housing and Com-
"nity Development Act of 1977,
these regulations have been developed
to consolidate the application require-
ments of both Section 202 and Section
8. Therefore, projects which meet the
requirements of the Section 202 pro-
gram shall be required to have met the
requirements for housing assistance
payments under the Section 8 Housing
Assistance Payments Program as pro-
duced in the U.S. Housing Act of 1937,
as amended.

§ 885.5 Definitions.

As used in this part:

Act means section 202 of the Hous-
ing Act of 1959, as amended, 12 U.S.C.
1701q.

Affiliated Entities means entities that
the field office determines to be relat-
ed 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 inheritance by any otherwise unaffiliated
entities of a single Borrower or of Bor-
rowers that have any identity of inter-
ests between themselves or their prin-
cipals.

Application means the application for
a Section 202 Fund Reservation,
including all required forms and ex-
hibits submitted in response to an In-
vitation for such applications.

Assistant Secretary means the Assis-
tant 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 mort-
gage 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 elde-
 rly and/or handicapped families. No
 part of the net proceeds from the
 Borrower may inure to the benefit of any
 private shareholder, contributor or in-
dividual 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 sub-
stantial rehabilitation of structures
for Housing and Related Facilities.

Development Cost means the cost of
construction or substantial rehabilita-
 tion of Housing and Related Facilities,
and of the land on which they are loc-
cated, including necessary site im-
provements and such other expenses
as may be determined by the Assistant
Secretary to be properly attribut-
able to the capital cost of the construc-
tion or substantial rehabilitation or de-
velopment of the Housing and Related
Facilities.

Elderly or Handicapped Family means:

(a) Families of two or more persons
that, because of which (or his or her
spouse) is 62 years of age or over or
handicapped, or

(b) The surviving member or mem-
bers of any family described in para-
graph (a) living in a unit assisted
under the section 8 program in con-
sign 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 handi-
capped person between the ages of 18
and 62 or

(d) Two or more elderly or handi-
capped persons living together, or one
or more such persons living with an-
other person who is determined by
HUD, based upon a licensed physi-
cian’s certification provided by the
resident family or prospective resident
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 applica-
tions 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 im-
pediment 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 handi-
capped if he or she is developmentally
disabled, i.e., if he or she has a disabil-
ity 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 at-
tains age eighteen, which constitutes a
substantial handicap to such individu-
als.

Housing and Related Facilities means
rental or cooperative housing

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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, 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.

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 will be incurred prior to the initial closing of the construction loan for the project.

Sponsor means any private nonpro- fit 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 but is 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 accor-
dance 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 691.403.

(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 Program, an amount of loan fund authority 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 loan fund 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. (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 (e)(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 Borrower.

(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 handi capped or developmentally disabled, i.e., mentally retarded, cerebral palsy, or epilepsy).

(6) A statement as to whether the Borrower (and/or Sponsor) has submitted a plan for developing the site, and whether the Borrower (and/or Sponsor) has submitted 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 11246, and section 3 of the Housing and Urban Development Act of 1968.

(8) A Housing Consultant's Certification 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 Non-profit 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 officer 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 to the elderly or handicapped, or which would give evidence of the organization's management capabilities.

(18) A statement as to whether the Borrower has received a section 202 full rent 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 elderly, evidence of the Borrower's tie to 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 displaced 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 statement 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,
RULES AND REGULATIONS

PROPOSED RULES

(1) For each Application which is determined to be subject to A-95 clearance, the field office shall forward a copy of the Application to the appropriate 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 the following factors which may be necessary to determine the eligibility and acceptability of the Application:

(a) The site and the location (site), affordability 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.

(b) The amount of section 8 contract authority reserved to the project.

(4) 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.

(5) Based on the factors set forth in this section (d), the field office shall determine for each allocation area the Applications which, in its judgment, are approvable. Selections shall be made in accordance with paragraph (e) of this section.

(e) For each allocation area, the field office shall rank, under 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, for selection of the highest ranking Applications in descending order which most reasonably approximate the estimated maximum number of units which can be funded in the 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 appropriateness is determined by the determination of 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 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 approval of the Borrower's Application is withdrawn.

(c) No part of the loan funds reserved may be transferred to a 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 880.208 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 fund reservations.

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 for projects 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, without modification, as 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 event of projects proposed for 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 direct loan commitments, 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.

§ 885.105 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, or its disapproval, as appropriate, 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 the loan,
(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 § 885.320.

§ 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)(1) through (b)(3) 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) $19,800 per family unit with one bedroom, (2) $24,900 per family unit with one bedroom, (3) $25,900 per family unit with two bedrooms.

(c) In order to compensate for the higher costs incident to construction of elevational projects, if the standards of construction and design, the field office may increase the dollar limitations per family unit as provided in paragraphs (b) 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) $30,500 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) Reduced loan amount—leaseholds. In the event the loan is secured by a leasehold estate rather than a fee simple estate, 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 Mortgages;
(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 Contractor 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) Requirements 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 rehabilita-
NOTICES

[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,
CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

<table>
<thead>
<tr>
<th>Deferral No.</th>
<th>Item</th>
<th>Budget Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>D78-57</td>
<td>Department of Commerce: Maritime Administration</td>
<td>Ship construction</td>
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<tr>
<td>D78-15A</td>
<td>Department of the Interior: Bureau of Land Management</td>
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</tr>
<tr>
<td>D78-58</td>
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<td>Antirecession financial assistance fund</td>
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<td>D78-28B</td>
<td>State and local government fiscal assistance trust fund</td>
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<tr>
<td></td>
<td>Total, deferrals</td>
<td></td>
</tr>
</tbody>
</table>

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 | 4,893,218

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 OF BUDGET AUTHORITY
(Ccontents of Special Message

<table>
<thead>
<tr>
<th>Agency</th>
<th>Department of Commerce</th>
<th>New budget authority</th>
<th>Appropriation title &amp; symbol</th>
<th>Other budgetary resources</th>
<th>Total budgetary resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bureau</td>
<td>Maritime Administration</td>
<td>Ship Construction 1/</td>
<td>132,000,000</td>
<td>229,184,322</td>
<td>361,184,322</td>
</tr>
</tbody>
</table>

1/ This account was the subject of a similar deferral in FY 1977.

NOTICES
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 OF BUDGET AUTHORITY
Report Pursuant to Section 1011 of P.L. 91-144

<table>
<thead>
<tr>
<th>Agency</th>
<th>Department of the Interior</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bureau</td>
<td>Bureau of Land Management</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appropriation title &amp; symbol</th>
<th>Oregon and California Grant Lands</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appropriation identification code</td>
<td>14-5136-0-2-302</td>
</tr>
<tr>
<td>Legal authority (in addition to Sec. 1011):</td>
<td>Antideficiency Act</td>
</tr>
<tr>
<td>Grant program</td>
<td>Yes</td>
</tr>
<tr>
<td>Type of account or fund:</td>
<td>Multiple-year</td>
</tr>
<tr>
<td>Type of budget authority:</td>
<td>Appropriation</td>
</tr>
<tr>
<td>Justification:</td>
<td>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).</td>
</tr>
</tbody>
</table>

Receipts for FY 1977 totaled $212,090,448 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.
Estimated Effects:
There will be no programmatic impact in FY 1978.

Outlay Effect:
There is no outlay effect of this deferral.

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.
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.

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.

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]

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