AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Vol. 43—No. 67
4-6-78
PAGES
14431-14636

federal register

THURSDAY, APRIL 6, 1978



highlights

OPERATION OUTREACH

New Information Services in Chicago

Presented in cooperation with the Chicago Federal Information Center at 219 S. Dearborn Street, the Office of the Federal Register is pleased to announce the following new information services beginning April 10, 1978:

(1) Walk-in information about the latest regulations and proposals published in the FEDERAL REGISTER.

(2) "Hot-Line" telephone link-up between Chicago and Washington for Federal Information Center staffers to provide answers to complex questions about regulations published in the FEDERAL REGISTER.

(3) "Dial-a-Reg" services for the Chicago dialing area (312)–663–0884 to provide an "advance" look at documents to be published in the FEDERAL REGISTER. This service is a recorded message which will be updated each working day.

(4) Special training for Federal Information Center personnel that will permit them to provide expanded research services to visitors needing information contained in back issues of the FEDERAL REGISTER or its companion publication, the Code of Federal Regulations.

These services are being tried in Chicago on an experimental basis. If successful, other selected Federal Information Centers across the country will have similar services at a future date.

SUNSHINE ACT MEETINGS 14598

NATIONAL ADVISORY COMMITTEE FOR WOMEN
Executive order establishing 14431

ALLOY TOOL STEEL IMPORTS
Presidential proclamation modifying limitations 14433

EDUCATIONAL EQUITY RESEARCH GRANTS PROGRAM
HEW/NIE proposes requirements, procedures, and funding criteria; comments by 5–8–78; applications by 5–31–78 (2 documents) (Part IV of this issue) 14634

INDIAN TRIBES AND ALASKA NATIVES
HUD/CPD sets deadline of 5–15–78 for pre-applications for Community Development Block Grant Discretionary Funds 14539

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
	CSC			CSC
	LABOR			LABOR
	HEW/ADAMHA			HEW/ADAMHA
	HEW/CDC			HEW/CDC
	HEW/FDA			HEW/FDA
	HEW/HRA			HEW/HRA
	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

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

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

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

federal register

Area Code 202 Phone 523-5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $5.00 per month or $50 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER.

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing **202–523–5240.**

FEDERAL REGISTER, Daily Issue:

Subscription orders (GPO)	**202**–783–3238
Subscription problems (GPO)	**202**–275–3050
"Dial - a - Regulation" (recorded summary of highlighted documents appearing in next day's issue).	**202**–523–5022
Scheduling of documents for publication.	523–3187
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5237
Public Inspection Desk	523–5215
Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–3517
Code of Federal Regulations (CFR)	523–3419
	523–3517
Finding Aids	523–5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents	523–5235
Index	523–5235

PUBLIC LAWS:

Public Law dates and numbers	523–5266
	523–5282
Slip Laws	523–5266
	523–5282
U.S. Statutes at Large	523–5266
	523–5282
Index	523–5266
	523–5282
U.S. Government Manual	523–5230
Automation	523–3408
Special Projects	523–4534

HIGHLIGHTS—Continued

CRUDE OIL AND NATURAL GAS
DOE/EIA to hold hearing on U.S. reserves and production; hearing 5–8–78; comments period extended to 5–8–78 ..... **14535**

GASOLINE
DOE/FERC publishes Commission's recommendations and analysis of motor gasoline decontrol and transition regulation **14491**

PETROLEUM AND COAL PRICE AND ALLOCATION
DOE eliminates administrative appeals from interpretations; effective 4–1–78 ..... **14436**

PRODUCT LIABILITY AND ACCIDENT COMPENSATION
Commerce issues an option paper (Part III of this issue) **14612**

UNIFORM TRAFFIC CONTROL DEVICES
DOT/FHWA solicits public views **14561**

RAIL BANK
DOT/FRA issues interim rules for acquiring interests in rail properties; effetive 4–6–78; comments by 5–22–78 ..... **14472**

INTERNATIONAL EDUCATIONAL AND CULTURAL EXCHANGE
State increases per diem allowances for foreign participants; effective 3–31–78 ..... **14456**

FEDERAL HOME LOAN BANK SYSTEM
FHLBB proposes reduced and simplified regulations; comments by 6–18–78 ..... **14505**

CLASS I CARRIERS IN EACH MODE
ICC proposes reporting revision; comments by 4–30–78 ..... **14528**

CHARTER TRIPS BY FOREIGN AIR CARRIERS
CAB proposes to allow split all-cargo charters and split passenger-cargo charters; comments by 5–16–78; reply comments by 6–5–78 ..... **14519**

BILATERAL TEXTILE NEGOTIATIONS
CITA announces negotiations with Colombia, Haiti, Mexico, Philippines, and Thailand; promptly submitted comments invited **14533**

MAIL IMPORTATIONS
Treasury/Customs issues rule on the examination of sealed letter class mail by Customs officials; effective 5–8–78 ..... **14451**

BANKRUPTCY-RELATED SECURITIES
SEC amends rules on resale; effective 5–1–78 ..... **14445**

REGULATIONS DRAFTING WORKSHOPS
OFR announces two additional workshops to be held 5–8 thru 5–11 and 6–12 thru 6–15–78 ..... **14556**

MEETINGS—
Commerce/NOAA: Potential Marine Sanctuaries offshore of California, 4–18 through 4–21–78 (4 documents) **14532, 14533**
DOD/Navy: Chief of Naval Operations Executive Panel Advisory Commitee, Technology Sub-Panel, 4–27 and 4–28–78 ..... **14534**
HEW/Assistant Secretary for Health: U.S. National Committee on Vital and Health Statistics, 5–3 and 5–4–78 ..... **14539**
Labor/OSHA: Standards Advisory Committee on Cutaneous Hazards, 4–20 and 4–21–78 ..... **14551**
USDA/FS: Humboldt National Forest Grazing Advisory Board, 5–23–78 ..... **14530**

SEPARATE PARTS OF THIS ISSUE
Part II, EPA **14602**
Part III, Commerce **14612**
Part IV, HEW/NIE (2 documents) **14634**

contents

THE PRESIDENT

Executive Orders

Advisory Committee for Women, National; establishing 14431

Proclamations

Alloy tool steel imports, limitations; modifications 14433

EXECUTIVE AGENCIES

AGENCY FOR INTERNATIONAL DEVELOPMENT

Rules

Procurement; contractor proposed salaries; approval and reporting procedures 14471

AGRICULTURAL MARKETING SERVICE

Rules

Oranges, navel, grown in Ariz. and Calif 14435
Oranges, valencia, grown in Ariz. and Calif 14435

Proposed Rules

Milk marketing orders:
Eastern Ohio-Western Pennsylvania 14478

AGRICULTURE DEPARTMENT

See also Agricultural Marketing Service; Farmers Home Administration; Forest Service.

ARMY DEPARTMENT

Rules

Investigations; procedures for officers and boards of officers 14458

CIVIL AERONAUTICS BOARD

Proposed Rules

Accounts and reports for certificated air carriers; uniform system, etc.:
Corporate disclosure regulations, model; terminated 14523
Charters; split all-cargo and split passenger-cargo 14519

Notices

Hearings, etc.:
Pevsner, Donald L.; correction 14530
Trans World Airlines, Inc 14530

COAST GUARD

Rules

Anchorage regulations:
South Carolina 14470

COMMERCE DEPARTMENT

See also Foreign-Trade Zones Board; National Oceanic and Atmospheric Administration.

Notices

Product liability and accident compensation issues; inquiry 14612

COMMUNITY PLANNING AND DEVELOPMENT, OFFICE OF ASSISTANT SECRETARY

Notices

Community development block grants:
Indian tribes and Alaska natives; pre-application deadline 14539

COMMUNITY SERVICES ADMINISTRATION

Notices

Emergency energy assistance program, funding declarations 14533

CUSTOMS SERVICE

Rules

Antidumping:
Disclosure conferences during full-scale investigations; correction 14456
Mail importations; examination of letter mail 14451

Notices

Duty-free treatment revocation petitions:
Chlorobenzilate, technical, from Israel 14563
Wire mesh fabric from Mexico 14562
Tariff reclassification petitions:
Bicycle reflectors, wide angle 14562

DEFENSE DEPARTMENT

See Army Department; Navy Department.

ECONOMIC REGULATORY ADMINISTRATION

Rules

Administrative procedures and sanctions:
Coal and oil; appeal from interpretations 14436

ENERGY DEPARTMENT

See also Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission.

Proposed Rules

Petroleum allocation and price rules and regulations:
Motor gasoline, exemption; recommendations; cross reference 14491

ENERGY INFORMATION ADMINISTRATION

Notices

Oil and gas reserves survey; estimates, production and ownership, etc.; extension of time 14535

ENVIRONMENTAL PROTECTION AGENCY

Rules

Air programs; energy-related authority:
Kansas 14470

Notices

Environmental programs, air and water pollution, pesticides, etc.; public participation in regulatory process; subject list 14604
Water pollution control; safe drinking water; public water systems designations:
Colorado 14537

EXPORT-IMPORT BANK

Rules

Freedom of information; correction 14438

FARMERS HOME ADMINISTRATION

Notices

Disaster and emergency areas:
Michigan 14529
Mississippi 14529
New Jersey 14529
Tennessee 14530

FEDERAL AVIATION ADMINISTRATION

Rules

Airworthiness directives:
General Electric 14438
Hawker Siddeley 14439
McDonnell Douglas 14440
Pratt & Whitney 14441
Control zone and transition area 14442
Control zones 14443
Standard instrument approach procedures 14444
Transition areas (2 documents) 14442

Proposed Rules

Airworthiness directives:
Pratt & Whitney 14517
Transition areas 14518

FEDERAL ENERGY REGULATORY COMMISSION

Proposed Rules

Petroleum allocation and price rules and regulations:
Motor gasoline, exemption; recommendations 14491

Notices

Hearings, etc.:
Watson Petroleums Exploration, Ltd., et al 14536

FEDERAL HIGHWAY ADMINISTRATION

Notices

Traffic Control Devices, Uniform, National Advisory Committee; inquiry 14561

FEDERAL HOME LOAN BANK BOARD

Proposed Rules

Federal home loan bank system: Simplification of regulations.. 14505

FEDERAL MARITIME COMMISSION

Notices

Environmental statements; availability, etc.:
Pacific Westbound Conference; wastepaper and woodpulp to Japan 14538
Freight forwarder licenses:
Global Freight Forwarders, Inc., et al 14538
Oil pollution; certificates of financial responsibility 14537

FEDERAL RAILROAD ADMINISTRATION

Rules

Rail banking, acquiring interests in rail properties; interim regulations and inquiry 14472

FEDERAL REGISTER OFFICE

Notices

Regulations drafting workshops, May and June 14556

FEDERAL TRADE COMMISSION

Proposed Rules

Consent orders:
Roland International Corp. et al 14524

FISH AND WILDLIFE SERVICE

Rules

Public access, entry, use, and recreation:
Salinas Lagoon National Wildlife Refuge, Calif..... 14477

FOREIGN-TRADE ZONES BOARD

Notices

Foreign-trade zone applications:
Philadelphia, Pa..... 14531

FOREST SERVICE

Notices

Environmental statements; availability, etc.:
Lewis & Clark National Forest, Rocky Mountain Front Planning Unit, Mont.; extension of time 14530
Meetings:
Humboldt National Forest Grazing Advisory Board..... 14530

GENERAL ACCOUNTING OFFICE

Notices

Regulatory reports review; proposals, approvals, etc..... 14539

GENERAL SERVICES ADMINISTRATION

See Federal Register Office.

GEOLOGICAL SURVEY

Notices

Coal leasing areas:
La Ventana, N. Mex 14549
New England-Mott, N. Dak 14549
Red Desert, Wyo 14550
Rock Springs, Wyo 14550
Tsaya, N. Mex..... 14550

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also National Institute of Education.

Notices

Meetings:
Vital and Health Statistics National Committee..... 14539

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See also Community Planning and Development, Office of Assistant Secretary.

Rules

Low-income housing:
Fair market rents and contract rent automatic annual adjustment factors; California and New Jersey market areas..... 14457

INTERIOR DEPARTMENT

See Fish and Wildlife Service; Geological Survey; Land Management Bureau.

INTERNATIONAL COMMUNICATION AGENCY

Rules

Privacy Act policies and procedures, editorial amendments .. 14457

INTERSTATE COMMERCE COMMISSION

Rules

Railroad car service orders:
Ballast cars, substitution..... 14475
Freight cars; distribution 14476
Grain cars, distribution 14475
Multiple-car shipments..... 14473
Railroad car service orders; various companies:
Missouri Pacific Railroad Co 14476
St. Louis-San Francisco Railway Co 14474

Proposed Rules

Reports:
Certification reporting requirements, class I carriers; inquiry 14528

Notices

Hearing assignments (2 documents) 14595, 14596
Motor carrier, broker, water carrier, and freight forwarder applications 14563
Motor carrier, broker, water carrier, and freight forwarder applications; correction..... 14595
Motor carriers:
Transfer proceedings 14596
Petitions, applications, finance matters (including temporary authorities), railroad abandonments, alternate route deviations, and intrastate applications 14574
Petitions, applications, finance matters (including temporary authorities), railroad abandonments, alternate route deviations, and intrastate applications; corrections (3 documents) 14595

JUSTICE DEPARTMENT

See Law Enforcement Assistance Administration.

LAND MANAGEMENT BUREAU

Notices

Alaska native selections; applications, etc.:
Koniag, Inc.; correction 14540
Ninilchik Natives Association, Inc 14545
Seldovia Native Association, Inc. (2 documents) 14540, 14542
Applications, etc:
Wyoming (2 documents)..... 14549
Withdrawal and reservation of lands, proposed, etc.:
Michigan..... 14548

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Notices

Pre-release program, model, evaluation; research grant proposals solicitation 14550

MANAGEMENT AND BUDGET OFFICE

Notices

Clearance of reports; lists of requests 14556
Privacy Act; systems of records 14556

NATIONAL ARCHIVES AND RECORDS SERVICE

See Federal Register Office.

NATIONAL INSTITUTE OF EDUCATION

Proposed Rules

Grant programs:
Educational equity research .. 14634

Notices

Grant programs; applications closing dates:
Educational equity research .. 14636

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Rules

Whaling:
Bowhead whales, taking by Indians, Aleuts, or Eskimos for subsistence; correction..... 14477

Notices

Marine mammal permit applications, etc.:
Mystic Marinelife Aquarium .. 14532
Meetings:
Marine sanctuaries, potential, offshore California (4 documents)..... 14532, 14533

NATIONAL TRANSPORTATION SAFETY BOARD

Notices

Safety recommendations and accident reports; availability, responses, etc 14555

NAVY DEPARTMENT

Notices

Environmental statements; availability, etc.:
Kahoolawe Island, Hawaii; weapons training; hearings 14534
Meetings:
CNO Executive Panel Advisory Committee 14534

NUCLEAR REGULATORY COMMISSION

Notices

Regulatory guides; issuance and availability 14552
Standard review plan; issuance and availability (5 documents) 14552, 14553
Applications, etc.:
Baltimore Gas & Electric Co. 14551
Illinois Power Co. 14551
Portland General Electric Co. et al 14552
Rochester Gas & Electric Corp. 14554
San Diego Gas & Electric Co. et al 14555
Tennessee Valley Authority (2 documents) 14554
Wisconsin Electric Power Co 14555

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Notices

Meetings:
Cutaneous Hazards Standards Advisory Committee 14551

SECURITIES AND EXCHANGE COMMISSION

Rules

Securities and Securities Exchange Acts:
Bankruptcy-related securities; resales 14445
Securities Exchange Act:
Transactions by members of National securities exchanges; correction 14451

Notices

Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc. (2 documents) 14558, 14559
Hearings etc.:
Admiralty Fund, Insurance Series 14557
Major Resources, Inc. 14559
National Fuel Gas Co. et al 14559

STATE DEPARTMENT

See also Agency for International Development.

Rules

International educational and cultural exchange program; increased per diem allowances to foreign participants 14456

Notices

Art objects, importation:
Egyptian Tutankhamun collection; extension of stay 14561
Romania, culturally significant objects from 14561
Environmental statements; availability, etc.:
Antarctic Living Marine Resources Conservation Regime; extension of time 14560

TENNESSEE VALLEY AUTHORITY

Notices

Transmission line and substation; Cordova-Union-Browns Ferry, Tenn., Miss., and Ala., hearing 14561

TEXTILE AGREEMENTS IMPLEMENTATION COMMITTEE

Notices

Bilateral textile negotiations with Colombia, Haiti, Mexico, Philippines, and Thailand; inquiry 14533

TRANSPORTATION DEPARTMENT

See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration.

TREASURY DEPARTMENT

See Customs Service.

VETERANS ADMINISTRATION

Proposed Rules

Procurement; contract files record requirements, etc 14525

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

3 CFR

EXECUTIVE ORDERS:

11126 (Revoked by EO 12050).... 14431
11832 (Revoked by EO 12050).... 14431
12050 14431

PROCLAMATIONS:

4445 (Revoked in part by Proc. 4559) 14433
4477 (See Proc. 4559) 14433
4509 (Revoked in part by Proc. 4559) 14433
4559 14433

7 CFR

907 14435
908 14435

PROPOSED RULES:

1036 14478

10 CFR

205 14436
303 14436

PROPOSED RULES:

210 (2 documents)..... 14491
211 (2 documents)..... 14491
212 (2 documents)..... 14491

12 CFR

404 14438

PROPOSED RULES:

521 14505
522 14505
523 14505
524 14505

12 CFR—Continued

PROPOSED RULES—Continued

525 14505
526 14505
527 14505
531 14505
532 14505

14 CFR

39 (4 documents) 14438–14441
71 (4 documents)..... 14442, 14443
97 14444

PROPOSED RULES:

39 14517
71 14518
207 14519
208 14519
212 14519
241 14523
245 14523
246 14523

16 CFR

PROPOSED RULES:

13 14524

17 CFR

230 14445
240 14451
241 14451
249 14445

19 CFR

145 14451
153 14456

22 CFR

61 14456
505 14457

24 CFR

888 14457

32 CFR

519 14458

33 CFR

110 14470

40 CFR

55 14470

41 CFR

Ch. 7 14471

PROPOSED RULES:

Ch. 8 14425

45 CFR

PROPOSED RULES:

1490 14634

49 CFR

270 14472
1033 (6 documents) 14473–14476

PROPOSED RULES:

1241 14528

50 CFR

26 14477
230 14477

reminders

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

Rules Going Into Effect Today

EPA—Air pollution; state implementation plans:
Oklahoma 9275; 3–7–78

List of Public Laws

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

CUMULATIVE LIST OF CFR PARTS AFFECTED DURING APRIL

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during April.

1 CFR

Ch. I 13865

3 CFR

EXECUTIVE ORDERS:

11126 (Revoked by EO 12050) 14431
11832 (Revoked by EO 12050) 14431
12050 14431

PROCLAMATIONS:

4445 (Revoked in part by Proc. 4559) 14433
4477 (See Proc. 4559) 14433
4509 (Revoked in part by Proc. 4559) 14433
4559 14433

MEMORANDUMS:

March 21, 1978 13999

4 CFR

PROPOSED RULES:

21 14318

5 CFR

213 14001
315 14001

7 CFR

1 14002
2 14004
102 14005
907 14435
908 14435
910 14303
1948 14282

PROPOSED RULES:

729 14025
913 14319
989 14024
1036 14478
1068 14025
1446 14035
1822 14322

8 CFR

299 14303

9 CFR

75 14022

PROPOSED RULES:

92 14042
113 14042
381 14043

10 CFR

Ch. I 14007
205 14436
303 14436
430 13865

PROPOSED RULES:

210 14491
211 14491
212 14491
430 13888

12 CFR

207 14304
220 14304
221 14304
224 14304
404 14438

PROPOSED RULES:

9 13889
521 14505
522 14505
523 14505
524 14505
525 14505
526 14505
527 14505
531 14505
532 14505

13 CFR

108 14007

14 CFR

39 ..... 13866, 13868, 14438–14441
71 ..... 13869, 14442, 14443
97 14444
1204 14008

PROPOSED RULES:

39 ..... 13890, 14517
71 ..... 13891, 14518
121 13891
129 13891
207 ..... 13892, 14519
208 ..... 13892, 14519
212 ..... 13892, 14519
214 13892
241 14523
245 14523
246 14523
298 13892
304 14044
371 13892
372a 13892
373 13892
378 13892
378a 13892

16 CFR

PROPOSED RULES:

13 ..... 14053, 14524
Ch. II 14322

17 CFR

230 14445
240 14451
241 14451
249 14445

19 CFR

145 14451
153 14456

PROPOSED RULES:

4 14060

21 CFR

182 14008
184 14008
540 14008
561 14008

PROPOSED RULES:

182 14064
184 14064
186 14064

22 CFR

61 14456
505 14457
Ch. V 14298

24 CFR

203 13870
207 13870
220 13870
841 13871
888 14457

26 CFR

1 13875
139 14305

PROPOSED RULES:

1 13893
601 ..... 13896, 13899

28 CFR

0 14009

29 CFR

1902 14009
2520 14009
2605 14010
2608 14010

PROPOSED RULES:

97 14424
575 14068
1910 14071

32 CFR

519 14458
706 13878
707 13878

33 CFR

110 14470
222 14013
279 14014
305 13990

36 CFR

7 14307

38 CFR

3 14016

39 CFR

111 ..... 14018, 14308

40 CFR

52 13879
55 14470
180 ..... 14019, 14020

PROPOSED RULES:

52 13899–13902
56 14072

41 CFR

Ch. I 14021
Ch. 7 14471
1–1 14315
105–65 14315

PROPOSED RULES:

Ch. 8 14525
5B–2 14323

42 CFR

54a 14276
462 13970

45 CFR

116c 14292
1060 14316
1061 14317

PROPOSED RULES:

177 14376
302 14323
1201 14072
1231 14077
1490 14634

47 CFR

95 ..... 13976, 13976

PROPOSED RULES:

63 14080
64 ..... 14080, 14088
67 13902
73 14088

49 CFR

1 14021
192 13880
270 14472
1003 14317
1033 ..... 14021, 14473–14476
1100 14317

PROPOSED RULES:

Ch. V 13905
1056 14324
1241 14528

50 CFR

26 14477
33 14022
230 ..... 13883, 14477

PROPOSED RULES:

227 13906

FEDERAL REGISTER PAGES AND DATES—APRIL

Pages	*Date*
13865–13998	Apr. 3
13999–14301	4
14303–14430	5
14431–14636	6

presidential documents

[3195-01]

Title 3—The President

Executive Order 12050 **April 4, 1978**

Establishing a National Advisory Committee for Women

By virtue of my authority as President of the United States of America, and in order to promote equality for women in the cultural, social, economic and political life of this Nation, it is hereby ordered as follows:

SECTION 1. *Establishment of a National Advisory Committee for Women.* There is established a National Advisory Committee for Women (hereafter the Committee).

SEC. 2. *Membership.* The President shall appoint not more than thirty individuals to serve on the Committee and shall designate one member to chair the Committee.

SEC. 3. *Responsibilities of the Committee.* (a) The Committee shall advise the President on a regular basis of initiatives needed to promote full equality for American women.

(b) The Committee shall assist in reviewing the applicability of such initiatives, including recommendations of the 1977 National Women's Conference, to particular programs and policies.

(c) The Committee shall promote the national observance of the United Nations Decade for Women, Equality, Development and Peace (1975–1985).

(d) The Committee shall gather and disseminate information relating to its responsibilities.

(e) The Committee shall consult regularly with the Interdepartmental Task Force established in Section 6.

SEC. 4. *Committee Procedures.* (a) The Committee may establish, within the limits of available funds, such working groups as may be necessary to fulfill its tasks. The membership of such groups may include persons not members of the Committee.

(b) The Committee shall establish such procedural regulations as are necessary to carry out its responsibilities.

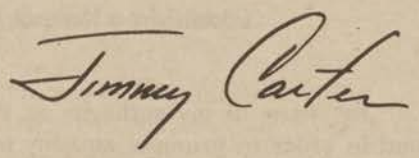
(c) The Committee shall conclude its work by March 1, 1980, and shall make a final report to the President.

SEC. 5. *Assistance and Cooperation.* The Committee may request any agency of the Executive Branch of the government to furnish it with such information, advice, funds and services as may be useful for the fulfillment of the Committee's functions under this Order. Such agencies are authorized, to the extent permitted by law, to honor the Committee's requests.

SEC. 6. *Interdepartmental Task Force.* The head of each agency within the Executive Branch shall designate persons responsible for reviewing the applicability of initiatives designed to promote full equality for American women, including recommendations of the 1977 National Women's Conference, to the agency's programs and policies. Persons so designated shall constitute the Interdepartmental Task Force, which shall consult regularly with the Committee. The President shall designate a person to chair the Task Force.

SEC. 7. *Federal Advisory Committee Act Functions.* Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I) which are applicable to the Committee, except that of reporting annually to the Congress, shall be performed by the Secretary of Labor in accordance with guidelines and procedures established by the Administrator of General Services.

SEC. 8. *Revocations.* Executive Order No. 11126, as amended, and Executive Order No. 11832, as amended, are revoked.



THE WHITE HOUSE,
April 4, 1978.

[FR Doc. 78-9402 Filed 4-5-78; 10:59 am]

[3195-01]

Proclamation 4559 • **April 5, 1978**

Modification of Temporary Quantitative Limitations on the Importation into the United States of Certain Articles of Alloy Tool Steel

By the President of the United States of America

A Proclamation

1. Proclamation No. 4445, of June 11, 1976, as modified by Proclamation No. 4477 of November 16, 1976, and Proclamation No. 4509 of June 15, 1977, imposed quantitative restrictions on the importation of certain articles of specialty steels. Section 203(h)(4) of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2253(h)(4)) permits the President to reduce or terminate any such relief if, after taking into account advice received from the United States International Trade Commission (USITC) and after seeking advice from the Secretaries of Commerce and Labor, the President determines that the reduction or termination is in the national interest.

2. I have sought and received advice from the USITC and from the Secretaries of Commerce and Labor concerning the effects of reducing or terminating import relief provided by Proclamation No. 4445, as modifed by Proclamation No. 4477 and Proclamation No. 4509, on steel provided for in item 923.26 of the Tariff Schedules of the United States (TSUS). I have determined, after considering that advice, that the exclusion of certain steels provided for in item 923.26 of the TSUS, known as chipper knife steel and band saw steel, from such quantitative restrictions is in the national interest.

3. Accordingly, the purpose of this proclamation is to terminate in part Proclamation No. 4445 of June 11, 1976, as modified by Proclamation No. 4477 of November 16, 1976, and Proclamation No. 4509 of June 15, 1977, so as to exclude so-called chipper knife steel and band saw steel provided for in item 923.26, TSUS, from the present quantitative restrictions for the remainder of the restraint period which began on June 14, 1977 and the entire restraint period beginning on June 14, 1978, and to make an appropriate reduction in the quota quantities for item 923.26, TSUS, applicable to the European Economic Community and Sweden for the restraint period beginning June 14, 1978 to reflect the exclusion of so-called chipper knife steel and band saw steel. The authority for this action is set forth in section 203(h)(4) (19 U.S.C. 2253(h)(4)), and section 125(b) (19 U.S.C. 2134(b)) of the Trade Act.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including sections 125 and 203 of the Trade Act (19 U.S.C. 2135 and 2253, respectively), do proclaim that—

A. Subpart A, part 2, of the Appendix to the TSUS (19 U.S.C. 1202) is modified as follows:

(1) by modifying headnote 2(a)(iii) to read as follows:

"(iii) The term "*alloy tool steel*" in item 923.26 refers to alloy steel which contains the following combinations of elements in the quantity, by weight, respectively indicated:
not less than 1.0% carbon and over 11.0% chromium; or
not less than 0.3% carbon and 1.25% to 11.0% inclusive chromium; or
not less than 0.85% carbon and 1% to 1.8% inclusive manganese; or

0.9% to 1.2% inclusive chromium and 0.9% to 1.4% inclusive molybdenum; or
not less than 0.5% carbon and not less than 3.5% molybdenum; or
not less than 0.5% carbon and not less than 5.5% tungsten;

but does not include the three following types of alloy tool steel which contain, in addition to iron, each of the specified elements by weight in the amounts indicated:

(1)	carbon:	not less than 0.95 nor more than 1.13 percent;
	manganese:	not less than 0.22 nor more than 0.48 percent;
	sulfur:	none, or not more than 0.03 percent;
	phosphorus:	none, or not more than 0.03 percent;
	silicon:	not less than 0.18 nor more than 0.37 percent;
	chromium:	not less than 1.25 nor more than 1.65 percent;
	nickel:	none, or not more than 0.28 percent;
	copper:	none, or not more than 0.38 percent;
	molybdenum:	none, or not more than 0.09 percent; or
(2)	carbon:	not less than 0.48 nor more than 0.55 percent;
	manganese:	not less than 0.20 nor more than 0.50 percent;
	silicon:	not less than 0.75 nor more than 1.05 percent;
	chromium:	not less than 7.25 nor more than 8.75 percent;
	molybdenum:	not less than 1.25 nor more than 1.75 percent;
	tungsten:	none, or not more than 1.75 percent;
	vanadium:	not less than 0.20 nor more than 0.55 percent; or
(3)	carbon:	not less than 0.47 nor more than 0.53 percent;
	manganese:	not less than 0.60 nor more than 0.90 percent;
	sulfur:	none, or not more than 0.015 percent;
	phosphorus:	none, or not more than 0.025 percent;
	silicon:	not less than 0.10 nor more than 0.25 percent;
	chromium:	not less than 0.90 nor more than 1.10 percent;
	nickel:	not less than 0.50 nor more than 0.70 percent;
	molybdenum:	not less than 0.90 nor more than 1.10 percent;
	vanadium:	not less than 0.08 percent nor more than 0.15 percent;"

(2) by inserting "3,167" and "8,295" in lieu of the existing quota quantities applicable to the European Economic Community and Sweden, respectively, in the quota quantity column headed June 14, 1978, for item 923.26.

B. The modifications of subpart A of part 2 of the Appendix to the TSUS, made by this proclamation, shall be effective as to articles entered, or withdrawn from warehouse, for consumption on and after the second day following the date of publication of this proclamation in the FEDERAL REGISTER.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of April, in the year of our Lord nineteen hundred and seventy-eight, and of the Independence of the United States of America the two hundred and second.

Jimmy Carter

[FR Doc. 78-9408 Filed 4-5-78; 12:04 pm]

rules and regulations

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

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

[3410-02]

Title 7—Agriculture

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

[Navel Orange Regulation 438]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period April 7-13, 1978. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: April 7, 1978.

FOR FURTHER INFORMATION CONTACT

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of navel oranges, as hereafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

The committee met on April 4, 1978, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges was easier during the last 7-day period.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 US.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 907.738 Navel Orange Regulation 438.

Order. (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period April 7, 1978, through April 13, 1978, are established as follows: (1) District 1: 770,000 cartons; (2) District 2: 180,000 cartons; (3) District 3: Unlimited movement.

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" mean the same as defined in the marketing order.

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

Dated: April 5, 1978.

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

[FR Doc. 78-9406-Filed 4-5-78; 11:35 am]

[3410-02]

[Valencia Orange Regulation 583; Valencia Orange Regulation 582, Amdt. 1]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period April 7-13, 1978, and increases the quantity of such oranges that may be so shipped during the period March 31, to April 6, 1978. Such action is needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: The regulation becomes effective April 7, 1978, and the amendment is effective for the period March 31 to April 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601-674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of Valencia oranges, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on April 4, 1978, to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of Valencia oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for Valencia oranges continues strong this week but is ex-

pected to decrease somewhat next week.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of Valencia oranges. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 908.883 Valencia Orange Regulation 583.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period April 7, 1978, through April 13, 1978, are established as follows: (1) District 1: 109,053 cartons; (2) District 2: 55,304 cartons; (3) District 3: 200,000 cartons.

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" mean the same as defined in the marketing order.

2. Paragraph (a)(3) in § 908.882 Valencia Orange Regulation 582 (43 FR 13367), is hereby amended to read:

"(3) District: 275,000 cartons."

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

Dated: April 5, 1978.

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

[FR Doc. 78-9405-Filed 4-5-78; 11:34 am]

[3128-01]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

PART 303—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Appeal from Interpretations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) hereby amends its petroleum and coal price and allocation procedural regulations to eliminate administrative appeals from interpretations issued by the Office of the General Counsel and to institute related procedural changes. These amendments are adopted substantially in the form proposed. This action is being taken because the DOE regards administrative appeal of formal interpretations as unnecessary and inappropriate.

EFFECTIVE DATE: April 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles Cope (Office of General Counsel), 12th and Pennsylvania Avenue NW., Room 1119, Washington, D.C. 20461, 202-566-9070.

SUPPLEMENTARY INFORMATION: On January 13, 1978, DOE issued a notice of proposed rulemaking (43 FR 2729, January 19, 1978, as corrected at 43 FR 3568, January 26, 1978) in which DOE proposed to amend its petroleum price and allocation procedural regulations to eliminate administrative appeal of formal interpretations issued by the Office of the General Counsel or Regional Counsels pursuant to 10 CFR Part 205, Subpart F, while preserving the right to seek modification or rescission of an interpretation at any time under Subpart F of Part 205. The preamble to the proposed regulation indicated that it was DOE's intention to delegate to the Assistant General Counsel for Interpretations and Rulings the authority to issue formal interpretations. The DOE also proposed to revise the procedural regulations to permit applications for reconsideration of an interpretation to be submitted to the General Counsel of the DOE within 30 days of the issuance of the interpretation. A parallel change in the procedural regulations applicable to the coal program at 10 CFR Part 303, Subpart G, was also proposed.

DOE received six written comments in response to the notice of proposed rulemaking, including four late comments. All these comments were taken into account in formulating the amendments adopted today.

Most of the comments received supported the amendments proposed by DOE. Some of the comments proposed additional changes. One proposal was to impose a time limit for responding to requests for interpretation. DOE believes that this suggestion is outside the scope of the rulemaking proceeding and is unnecessary in view of various steps taken within the last year by DOE which have substantially reduced both the backlog of interpretation requests and the time required to respond to such requests. Another proposal was to strictly construe the definition of "aggrieved," which appears in §§205.2 and 303.2, in order to restrict the number of "aggrieved persons" who may file a request for reconsideration under the new reconsideration provisions proposed in the notice of proposed rulemaking (§§ 205.85(f) and 303.95(f)). These provisions, as proposed, permitted "any persons aggrieved by an interpretation" to submit a request for reconsideration. The pre-existing appeal provision permitted "any person aggrieved by an interpretation" to submit an appeal. The number of persons which have filed appeals of interpretations has not been excessive and no undue delays have been encountered because of this language. DOE has therefore made no change in this respect in the amendments adopted today.

DOE, has, however, revised the reconsideration provision in another respect to minimize undue delay. Sections 205.85(f) and 303.95(f), as adopted, provide that a petition for reconsideration will be deemed denied if the General Counsel does not respond to the petition within 60 days of receipt of the petition. The General Counsel may, however, extend the time for such response by notifying the petitioner of such extension within the 60-day period. In all other respects the amendments adopted today reflect the amendments as proposed.

The new procedures adopted today are effective April 1, 1978. DOE will apply the new procedures to interpretations issued on or after April 1, 1978, while continuing to apply the appeals procedures in effect prior to April 1, 1978, to any appeal of an interpretation filed pursuant to those procedures prior to April 1, 1978. DOE will also permit appeals to be filed on or after April 1, 1978, in connection with any interpretation issued prior to April 1, 1978, if the 30-day period for filing an appeal has not run by that date. However, in such cases, if all parties served with the interpretation agree, DOE will review an interpretation as a petition for reconsideration under the new procedures adopted today.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Parts 205 and 303 of Chapter II, Title 10 of the Code of Federal Regulations,

[1] EDITORIAL NOTE: Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Department of Energy.

are amended as set forth below, effective April 1, 1978.

Issued in Washington, D.C., March 34, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration,
Department of Energy.

1. The definition of "Interpretation" in § 205.2 is amended to read as follows:

§ 205.2 Definitions.

* * * * *

"Interpretation" means a written statement issued by the General Counsel or his delegate or Regional Counsel, in response to a written request, that applies the regulations, rulings, and other precedents previously issued, to the particular facts of a prospective or completed act or transaction.

2. Section 205.80(a) is revised to read as follows:

§ 205.80 Purpose and scope.

(a) This subpart establishes the procedures for the filing of a formal request for an interpretation and for the consideration of such request. Responses, which may include verbal or written responses to general inquiries or to other than formal written requests for interpretation filed with the General Counsel or his delegate or a Regional Counsel, are not interpretations and merely provide general information.

3. In § 205.85(a) the words "or his delegate" are added after the words "General Counsel."

4. In § 205.85 paragraph (a) is revised and a new paragraph (f) is added to read as follows:

§ 205.85 Decision and effect.

(a) An interpretation may be issued after consideration of the request for interpretation and other relevant information received or obtained during the proceeding.

* * * * *

(f)(1) Any person aggrieved by an interpretation may submit a petition for reconsideration to the General Counsel within 30 days of service of the interpretation from which the reconsideration is sought. There has not been an exhaustion of administrative remedies until a period of 30 days from the date of service of the interpretation has elapsed without receipt by the General Counsel of a petition for reconsideration or, if a petition for reconsideration of the interpretation has been filed in a timely manner, until that petition has been acted on by the General Counsel. However, a petition to which the General Counsel does not respond within 60 days of the date of receipt thereof, or within such extended time as the General Counsel may prescribe by written notice to the petitioner concerned within that 60 day period, shall be considered denied.

(2) A petition for reconsideration may be summarily denied if—

(i) It is not filed in a timely manner, unless good cause is shown; or

(ii) It is defective on its face for failure to state, and to present facts and legal argument in support thereof, that the interpretation was erroneous in fact or in law, or that it was arbitrary or capricious.

(3) The General Counsel may deny any petition for reconsideration if the petitioner does not establish that—

(i) The petition was filed by a person aggrieved by an interpretation;

(ii) The interpretation was erroneous in fact or in law; or

(iii) The interpretation was arbitrary or capricious. The denial of a petition shall be a final order of which the petitioner may seek judicial review.

5. Section 205.86 is revised to read as follows:

§ 205.86 Appeal.

There is no administrative appeal of an interpretation.

§§ 205.100 and 205.101 [Amended]

6. The words "or interpretation" and references to Subpart F, are deleted wherever they appear in §§ 205.100 and 205.101.

§ 205.102(a) [Amended]

7. In § 205.102(a) the words "or an 'Appeal of Interpretation,'" are deleted.

§ 205.103 [Amended]

8. Section 205.103(c) is deleted in its entirety.

§ 205.105 [Amended]

9. The words "or interpretation" are deleted wherever they appear in § 205.105.

§ 205.107 [Amended]

10. In § 205.107(a) the words "or interpretation" are deleted.

§§ 205.130, 205.132, and 205.134 [Amended]

11. In §§ 205.130, 205.132(a), 205.132(b) and 205.134(a) the words "or interpretation" are deleted.

§ 205.135 [Amended]

12. In § 205.135(b) the words "or interpretation" are deleted wherever they appear.

13 The definition of "Interpretation" in § 303.2 is amended to read as follows:

§ 303.2 Definitions.

"Interpretation" means a written statement issued by the General Counsel or his delegate, in response to a written request, that applies the regulations, rulings, and other precedents previously issued, to the particular facts of a prospective or completed act or transaction.

14. Section 303.90(a) is revised to read as follows:

§ 303.90 Purpose and scope.

(a) This subpart establishes the procedures for the filing of a formal request for an interpretation and for the consideration of such request. Responses, which may include verbal or written responses, to general inquiries or to other than formal written requests for interpretation filed with the General Counsel or his delegate, are not interpretations and merely provide general information.

* * * * *

§ 303.92 [Amended]

15. In § 303.92, the words "or his delegate" are added after the words "General Counsel."

16. In § 303.95 paragraph (a) is revised and a new paragraph (f) is added to read as follows:

§ 303.95 Decision and effect.

(a) An interpretation may be issued after consideration of the request for interpretation and other relevant information received or obtained during the proceeding.

* * * * *

(f)(1) Any person aggrieved by an interpretation may submit a petition for reconsideration to the General Counsel within 30 days of service of the interpretation from which the reconsideration is sought. There has not been an exhaustion of administrative remedies until a period of 30 days from the date of service of the interpretation has elapsed without receipt by the General Counsel of a petition for reconsideration or, if a petition for reconsideration of the interpretation has been filed in a timely manner, until that petition has been acted on by the General Counsel. However, a petition to which the General Counsel does not respond within 60 days of the date of receipt thereof, or within such extended time as the General Counsel may prescribe by written notice to the petitioner concerned within that 60 day period, shall be considered denied.

(2) A petition for reconsideration may be summarily denied if—

(i) It is not filed in a timely manner, unless good cause is shown; or

(ii) It is defective on its face for failure to state, and to present facts and legal argument in support thereof, that the interpretation was erroneous in fact or in law, or that it was arbitrary or capricious.

(3) The General Counsel may deny any petition for reconsideration if the petitioner does not establish that—

(i) The petition was filed by a person aggrieved by an interpretation;

(ii) The interpretation was erroneous in fact or in law; or

(iii) The interpretation was arbitrary or capricious. The denial of a petition shall be a final order of which the petitioner may seek judicial review.

17. Section 303.96 is revised to read as follows:

§ 303.96 Appeal.

There is no administrative appeal of an interpretation.

§§ 303.100 and 303.101 [Amended]

18. The words "or interpretation" and references to Subpart G, are deleted wherever they appear in §§ 303.100 and 303.101.

§ 303.102 [Amended]

19. In § 303.102(a) the words "or an 'Appeal of Interpretation (ESECA)'" are deleted.

§ 303.103 [Amended]

20. In § 303.103 the words "or interpretation" are deleted.

§ 303.106 [Amended]

21. The words "or interpretation" are deleted wherever they appear in § 303.106.

§ 303.108 [Amended]

22. In § 303.108(a) the words "or interpretation" are deleted.

23. The heading for Subpart K of Part 303 is amended to read as follows:

Subpart K—Modification or Rescission of Orders Other Than Prohibition Orders or Construction Orders

§§ 303.140 and 303.143 [Amended]

24. In §§ 303.140(a), 303.140(b), and 303.143(c)(2) the words "or an interpretation" are deleted.

§ 303.144 [Amended]

25. In § 303.144(a) the words "or interpretation" are deleted.

§ 303.145 [Amended]

26. In § 303.145(b)(1) the words "or an interpretation" are deleted.

27. The words "or interpretation" are deleted wherever they appear in §303.145(b)(2)(iii).

28. In § 303.145(c) the words "or interpretation" are deleted.

[FR Doc. 78-9033 Filed 4-5-78; 8:45 am]

[6690-01]

Title 12—Banks and Banking

CHAPTER IV—EXPORT-IMPORT BANK OF THE UNITED STATES

PART 404—DISCLOSURE OF INFORMATION

Correction

AGENCY: Export-Import Bank of the United States.

ACTION: Correction of Amendment to Regulations.

SUMMARY: This corrects the language amending the regulations governing the disclosure of information under the Freedom of Information Act (12 CFR Part 404) which appeared at 42 FR 56316 on October 25, 1977.

FOR FURTHER INFORMATION CONTACT:

Warren W. Glick, General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue NW., Washington, D.C. 20571, 202-566-8834.

The language amending § 404.5(c) of the regulations should read as follows:

In § 404.5(c), delete "Executive Vice President" wherever it appears and insert in lieu thereof "President and Chairman."

WARREN W. GLICK,
General Counsel.

MARCH 29, 1978.

[FR Doc. 78-9056 Filed 4-5-78; 8:45 am]

[4910-13]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 78-NE-04; Amdt. 39-3169]

PART 39—AIRWORTHINESS DIRECTIVES

General Electric Co. CJ610 -5 and -6 Turbojet and CF700 -2C, -2D, and -2D-2 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On March 9, 1978, an emergency telegraphic AD was issued requiring removal from service of certain sixth and seventh stage compressor disks, and the inspection and removal, if necessary, of certain first stage compressor disks on CJ610 -5 and -6 turbojet and CF700 -2C, -2D, and -2D-2 turbofan engines. These disks are suspected to be from a forging lot manufactured from improper material. The AD is now being published in the FEDERAL REGISTER as an amendment to the Federal Aviation Regulations.

DATE: Effective date, April 6, 1978. Compliance schedule—as prescribed in text of AD.

ADDRESSES: To obtain copies of the service bulletins referenced in the AD, contact Customer Service and Support Manager, General Electric Co., 1000 Western Avenue, Lynn, Mass. 01910. Copies of the service bulletins are contained in the Rules Docket, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Mass. 01803.

FOR FURTHER INFORMATION CONTACT:

Donald F. Perrault, Propulsion Section (ANE-214), Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Mass. 01803; telephone: 617-273-7337.

SUPPLEMENTARY INFORMATION: The telegraphic Airworthiness Directive adopted and made effective to all known U.S. operators of General Electric Co. CJ610 -5 and -6 turbojet and CF700 -2C, -2D, and -2D-2 turbofan engines on March 9, 1978, was required as a result of an uncontained low cycle fatigue failure of a seventh stage compressor disk on a military J85 engine. This disk was from a forging lot manufactured from improper material. Other specific CJ610/CF700 engine disks are also suspected to be from this lot.

The telegraphic Airworthiness Directive required removal from service of certain serial numbered sixth stage and seventh stage compressor disks prior to further flight, and the inspection and removal from service, if necessary, of certain serial numbered first stage compressor disks.

These conditions still exist and this AD is now being published in the FEDERAL REGISTER as an amendment to section 39.13 of part 39 of the Federal Aviation Regulations.

Since a situation exists that requires immediate adoption of the regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

DRAFTING INFORMATION

The principal authors of this document are Donald F. Perrault, Engineering and Manufacturing Branch, Flight Standards Division, and George L. Thompson, Associate Regional Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new Airworthiness Directive:

GENERAL ELECTRIC CO.: Applies to CJ610 -5 and -6 turbojet and CF700 -2C, -2D, and -2D-2 turbofan engines with compressor disks identified by serial numbers below.

Compliance required prior to further flight, unless already accomplished.

To prevent low cycle fatigue failure of compressor disks suspected to have improper material accomplish the following:

1. Remove from service sixth stage compressor disks, P/N 37D401316P101, and seventh stage compressor disks, P/N 37D401317P101, having serial numbers listed below and replace with serviceable disks:

Serial Nos.: Stage 6: 07911, 07932; Stage 7: 08742, 08745, 08756, 08760, 08761, 08767, 08806, 08815, 08818, 08822, 08825, 08826, 08832, 08849, 08851, 08853, 08867, 08873, 08876, 08879, 08891, 08895, 08897, 08899, 09120, 09127, 09145.

2. Inspect first stage compressor disks, P/Ns 37E501428P102 and 37E501428P106, with serial numbers listed below for material properties in accordance with General Electric Co. CJ610 engine Alert Service Bulletin No. (CJ610) A72-130, dated March 8, 1978, or CF700 engine Alert Service Bulletin No. (CF700) A72-140, dated March 8, 1978, as appropriate, or later revision approved by the Chief, Engineering and Manufacturing Branch, FAA, New England Region:

Serial Nos.: 09804, 09811, 09818, 09825, 09847, 09861.

3. Disks determined to be satisfactory per General Electric Co. inspection procedures may be returned to service. Replace unsatisfactory disks with serviceable disks.

4. Disks removed from service are to be forwarded to General Electric Co. for evaluation.

The manufacturer's service bulletins identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 522(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Customer Service and Support Manager, General Electric Co., 1000 Western Avenue, Lynn, Mass. 01910. These documents may also be examined at Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Mass. 01803, and FAA Headquarters, 800 Independence Avenue SW., Washington, D.C.

This amendment becomes effective April 6, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Burlington, Mass., on March 27, 1978.

NOTE.—The incorporation by reference provisions of this document were approved by the Director of the Federal Register on June 19, 1967.

ALBERT E. HOUCK,
Acting Director.

[FR Doc. 78-8961 Filed 4-5-78; 8:45 am]

[4910-13]

[Docket No. 17717; Amdt. 39-3172]

PART 39—AIRWORTHINESS DIRECTIVES

Hawker Siddeley Aviation, Ltd. Model AW-650 Series 101 Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires detailed inspections of the intermediate to center wing joints for corrosion and rework as necessary on Hawker Siddeley Aviation, Ltd., AW-650 series 101 airplanes. The AD is prompted by a report of serious exfoliation corrosion being found in the wing joints which could result in the loss of the wing in flight.

DATE: Effective April 20, 1978. Compliance required before further flight unless already accomplished.

ADDRESSES: The applicable service bulletin and reports referenced therein may be obtained from: Hawker Siddeley Aviation, Ltd., Product Support Department, Woodford, Stockport, Chesire, England, Telephone: 061-439-5050. A copy of the service bulletin and report referenced therein are contained in the rules docket for this amendment in Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

D. C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, telephone 513.38.30.

SUPPLEMENTARY INFORMATION: There has been a report of serious corrosion being found in the intermediate to center wing joints on a Hawker Siddeley Aviation, Ltd., AW-650 Series 101 airplane. The condition was detected upon dismantling and inspecting an AW-650 airplane after similar corrosion was initially found on the military AW-660 version of the aircraft. Since this condition is likely to exist or develop on other airplanes of this same type design, an airworthiness directive is being issued to require inspection and rework as necessary of the intermediate to center wing joints on Hawker Siddeley Aviation, Ltd., Model AW-650 series 101 airplanes.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

DRAFTING INFORMATION

The principal authors of this document are F. J. Karnowski, Europe, Africa, and Middle East Region, F. Kelley, Flight Standards Service, and P. Lynch, Office of the Chief Counsel.

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 3913) is amended by adding the following new Airworthiness Directive:

HAWKER SIDDELEY AVIATION, LTD. Applies to AW-650 Series 101 airplanes certificated in all categories.

To detect corrosion in the wing joints which if left undetected could seriously affect the structural strength of the wing, accomplish the following:

(a) Before further flight, except that the airplane may be flown in accordance with FAR 21.197 and 21.199 to a base where the work can be performed, dismantle the intermediate to center joints and inspect and rework as necessary in accordance with the section entitled "Accomplishment Instructions" of Hawker Siddeley Aviation, Ltd. Service Bulletin 57/55, dated September 1977, or an FAA-approved equivalent.

For the purpose of complying with this AD the following Hawker Siddeley Aviation, Ltd., reports referenced in Service Bulletin 57/55 are applicable:

HSA-MES-R-650-0001, Issue 2, December 1977.
HSA-MES-R-650-0002, Issue 2, December 1977.
HSA-MES-R-650-0003, Issue 3, January 1978.
HSA-MES-R-650-0004, Issue 3, January 1978.
HSA-MES-R-650-0005, Issue 2, December 1977.
HSA-MES-R-650-0006, Issue 3, January 1978.

This amendment becomes effective April 20, 1978.

(Secs. 313(a), 601, and 603 Federal Aviation Administration Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act. (49 U.S.C. 1655(c)); 14 CFR 11.89.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on March 27, 1978.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc. 78-8946 Filed 4-5-78; 8:45 am]

[4910-13]

[Docket No. 77-WE-17-AD; Amdt. 39-3176]

PART 39—AIRWORTHINESS DIRECTIVES

McDonnell Douglas Model DC-9 and C-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an airworthiness directive (AD) scheduled to become effective April 8, 1978 which requires inspection, repair and replacement of fuselage frame lower left hand and right hand fittings on certain McDonnell Douglas DC-9 airplanes. This amendment incorporates additional information regarding FAA approved repair methods and establishes crack limits and additional, relieving inspection criteria.

DATES: Effective date April 6, 1978.

Initial compliance required within the next 3,400 hours time in service for airplanes with 12,000 hours or more time in service as of the effective date of this AD.

For airplanes with less than 12,000 hours time in service as of the effective date of this AD, compliance required prior to accumulation of 15,400 hours time in service.

ADDRESSES: Persons affected by this AD may obtain copies of applicable McDonnell Douglas service information cited in this AD by writing to: McDonnell Douglas Corp., 3855 Lakewood Boulevard, Long Beach, Calif. 90846. Attention: L. A. Eisenbert, C1-75, (54-60.) Also, a copy of the service bulletin may be reviewed at, or a copy obtained from: Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591; or Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, Calif. 90261.

FOR FURTHER INFORMATION CONTACT:

Jerry J. Presba, Executive Secretary, Airworthiness Directives Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009, telephone: 213-536-6351.

SUPPLEMENTARY INFORMATION: Amendment 39-3149 (43 FR 9587), AD 78-05-03 requires inspection and replacement or repair of over-wheelwell fuselage frames manufactured with 7075-T6 aluminum alloy material on McDonnell Douglas DC-9 Series airplanes. Subsequent to the issuance of AD 78-05-03 the FAA has reviewed and approved McDonnell Douglas Service Bulletin 53-131 dated February 24, 1978 which contains specific crack limits and repair procedures. The establishment of crack limits provides relief to persons affected by the original AD. The definition of repair procedures is clarifying. No new substantive requirements are imposed by this AD. Since a situation exists requiring immediate adoption of this regulation it is found that notice and public procedure hereon are impracticable, and good cause exists for making the airworthiness directive effective immediately.

Therefore AD 78-05-03 is being superseded by a new AD.

Drafting Information

The principal authors of this document are Harry J. Irwin, Aircraft Engineering Division, and Richard G. Wittry, Office of the Regional Counsel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9 and C-9 series airplanes, certificated in all categories, which correspond to the factory serial numbers as listed below.

45695	through	45749	47399	through 47482
45770	through	45799	47484	through 47514
45825	through	45847	47516	through 47557
45863	through	45876	47559	through 47764
47000	through	47386	47769	
47389	through	47397	47771	

Compliance required as indicated, unless already accomplished:

To prevent possible failure of the over-wheelwell fuselage frame(s) lower fittings manufactured with 7075-T6 aluminum alloy material, accomplish the following:

a. For airplanes with 12,000 or more hours time in service on the effective date of this AD, which have not had new frames installed, within the next 3,400 hours time in service or 12 calendar months, whichever occurs earlier, and thereafter at intervals not to exceed 8,000 hours time in service or 27 calendar months, whichever occurs earlier, comply with the program of inspections established in Paragraph (c), below.

b. For airplanes with less than 12,000 hours time in service as of the effective date of the AD, comply with Paragraph (c), below, prior to the accumulation of 15,400 hours time in service or 50 calendar months, whichever occurs earlier, and thereafter at intervals not to exceed 8,000 hours time in service or 27 calendar months, whichever occurs earlier.

c. Visually inspect for evidence of cracking, using optical inspection aids with a minimum of 2X magnification, the fore and aft webs, flanges and radii, in the areas of the frame lower fitting, as shown in Sketch No. 2765 of McDonnell Douglas Service Bulletin 53-131 dated February 24, 1978, or later FAA-approved revision (hereinafter referred to as SB 53-131).

d. If no cracks are found:

(1) Clean and spray the pocket and adjacent areas of the frame fitting with corrosion-inhibiting compound, per DAC SRM, Chapter 51-10-3, and perform repetitive inspections and corrosion-inhibiting treatment at intervals not to exceed 8,000 hours time in service or 27 calendar months, whichever occurs earlier; or

(2) Repair per Option 1 of SB 53-131 and conduct repetitive inspection at intervals not to exceed 16,000 hours time in service or 54 calendar months whichever occurs earlier; or

(3) Replace with new part(s) per Paragraphs f.2 or f.3 and comply with the applicable program of repetitive inspections and/or corrective actions per this AD.

e. If cracks are found which are within the limits of Figure 1 of SB 53-131, aircraft may be continued in service, provided that

(1) Repetitive inspections are conducted at intervals not to exceed 3,400 flight-hours if an adjacent frame does not have cracks in pocket area or has been repaired per Option 1 of SB 53-131; or

(2) Repetitive inspections are conducted at intervals not to exceed 1,700 flight-hours if adjacent frame(s) has unrepaired flange cracks within limits as outlined on Figure 1 of SB 53-131.

f. If cracks are found, which are beyond the limits of Figure 1, but within the limits of Figure 2 of SB 53-131, before further flight.

(1) Repair per Option 1 of SB 53-131 and conduct repetitive inspections at intervals not to exceed 8,000 hours time in service or 27 calendar months, whichever occurs earlier; or

(2) Replace with a new part(s) of the same design made from 7075-T6 aluminum material; or

(3) Replace with a new part(s) of the same design made from 7075-T73 aluminum alloy material.

g. If cracks are found which are beyond the limits of Figure 2 of SB 53-131, before further flight:

(1) Replace with a new part(s) of the same design made from 7075-T6 aluminum alloy material; or

(2) Replace with a new part(s) of the same design made from 7075-T73 alumuinum alloy material.

h. The requirements per this AD may be terminated for that frame(s) only, when both the right and left hand fittings, made from 7075-T73 aluminum alloy material, have been installed.

i. If new parts have been installed per f(2) or g(1) for the stations specified, the requirements of this AD may be discontinued for that part(s) only, until the new part(s) has accumulated 15,400 hours time in service or within 50 calendar months after the part(s) has been replaced, whichever occurs earlier, at which time reinstate the program of repetitive inspection and/or corrective action per this AD.

j. Equivalent inspection procedures and repairs may be used when approved by the Chief, Aircraft engineering Division, FAA Western Region.

k. Special flight permits may be issued in accordance with FAR's 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or maintenance required by this AD.

l. Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Aircraft Engineering Division, FAA Western Region may adjust

the initial and repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

This supersedes Amendment 39-3149 (43 FR 9587), AD 78-05-03.

This amendment becomes effective April 6, 1978.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

NOTE.—The Federal Aviation Administration had determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Los Angeles, Calif., on March 29, 1978.

ROBERT H. STANTON,
Director, FAA Western Region.

[FR Doc. 78-9087 Filed 4-5-78; 8:45 am]

[4910-13]

[Docket No. 77-NE-27, Amdt. 39-3175]

PART 39—AIRWORTHINESS DIRECTIVES

Pratt & Whitney Aircraft Wasp, Jr. and R985 Model Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection of cylinder heads on Pratt & Whitney R985 model engines. The AD is needed to provide a more positive means of detecting cracked cylinder heads than is currently required by AD 76-20-01, Amendment 39-2728, which is superseded by this amendment.

DATES: Effective date—May 2, 1978; Compliance schedule—as prescribed in body of AD.

ADDRESSES: The applicable service bulletin may be obtained from Pratt & Whitney Aircraft, Division of United Technologies Corp., 400 Main Street, East Hartford, Conn. 06108. A copy of the service bulletin is contained in the Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C. 20591, or Rules Docket, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Mass. 01803.

FOR FURTHER INFORMATION CONTACT:

Lewis Smith, Propulsion Section (ANE-214), Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Mass. 01803; telephone 617-273-7347.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring a detailed inspection on wing and ultrasonic inspection in the shop, of R985 cylinder assemblies was published in the FEDERAL REGISTER at 43 FR 1355. The proposal was prompted by the determination that cracks were not adequately being detected by the inspections of AD 76-20-01, amendment 39-2728.

Interested persons have been afforded an opportunity to participate in the making of the amendment. One commentator suggested that the visual inspection of Paragraph 1B be changed from 150 hours to 200 hours. The 150 hours is less restrictive than the 100-hour period currently required by AD 76-20-01, and the FAA does not consider that any extension beyond 150 hours is warranted at this time. If data obtained from field and shop inspections indicates that the inspection frequency can be decreased at some time in the future, the FAA will review this data and amend the AD accordingly.

The same commentator suggested that in the Note, the date of the last inspection be added; i.e., UT 78. This is in agreement with the Pratt & Whitney Service Bulletin, and the AD is amended accordingly.

The availability of the special equipment required was also questioned. This material is available and, if ordered on a timely basis, can be obtained by the effective date of the AD.

DRAFTING INFORMATION

The principal authors of this document are Lewis Smith, Propulsion Section, Engineering and Manufacturing Branch, and George L. Thompson, Office of the Regional Counsel, New England Region.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by superseding AD 76-20-01, Amendment 39-2728, with the following new airworthiness directive:

PRATT & WHITNEY AIRCRAFT: Applies to Pratt & Whitney Aircraft Wasp, Jr. and R985 model engines.

Compliance required as indicated, unless already accomplished.

To prevent cylinder head separation from the barrel, perform the following in accordance with Pratt & Whitney Aircraft Service Bulletion No. 1785 or later FAA-approved revision.

1. Visually inspect cylinder heads in accordance with Part B of the bulletin as follows:

A. Cylinders not ultrasonically inspected, inspect within 50 hours time in service after effective date of the AD, and thereafter at intervals not to exceed 100 hours time in service.

B. Cylinders ultrasonically inspected, inspect within 150 hours time in service after effective date of the AD, and thereafter at intervals not to exceed 150 hours time in service.

2. Remove visibly cracked cylinders and cylinders with black combustion leakage from service before further flight.

3. After the effective date of this AD, inspect all cylinder assemblies, prior to installation on an engine, by the ultrasonic test procedure in Part A of Service Bulletin 1785 or equivalent method approved by the Chief, Engineering and Manufacturing Branch, FAA, New England Region.

4. Remove from service cylinders which show cracks in excess of the limits of Part A, Section IV, of the bulletin.

NOTE.—Cylinders which have been ultrasonically tested are stamped "UT" and last two digits of year inspected over the intake port.

The manufacturer's service bulletin identified and described in this directive is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Pratt & Whitney Aircraft, Division of United Technologies Corp., 400 Main Street, East Hartford, Conn. 06108. This document may also be examined at Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Mass. 01803, and FAA Headquarters, 800 Independence Avenue SW., Washington, D.C. 20591. This supersedes AD 76-20-01, Amendment 39-2728.

This amendment becomes effective May 2, 1978.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

NOTE.—The incorporation by reference provisions of this document was approved by the Director of the Federal Register on June 19, 1967.

Issued in Burlington, Mass., on March 30, 1978.

ROBERT E. WHITTINGTON,
Director, New England Region.

[FR Doc. 78-9089 Filed 4-5-78; 8:45 am]

[4910-13]

[Docket No. 78-SO-18]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Brookhaven, Miss., Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Brookhaven, Miss., Transition Area. The name of the Brookhaven Municipal Airport has been changed to Brookhaven-Lincoln County Airport. The action of the city of Brookhaven, officially changing the name, requires this to be reflected in the transition area descriptions.

EFFECTIVE DATE: 0901 G.m.t., July 13, 1978.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320.

FOR FURTHER INFORMATION CONTACT:

William F. Herring, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: In a regular meeting, the city of Brookhaven officially changed the mame of the Brookhaven Municipal Airport to Brookhaven-Lincoln County Airport. Therefore, it is necessary to alter the description of the Brookhaven, Miss., transition area to reflect the name change. Since this alteration is editorial in nature, notice and public procedures hereon are not necessary.

DRAFTING INFORMATION

The principal authors of this document are William F. Herring, Airspace and Procedures Branch, Air Traffic Division, and Keith S. May, Office of Regional Counsel.

ADOPTION OF AMENDMENT

Accordingly, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., July 13, 1978, as follows:

In Subpart G, § 71.181 (43 FR 440), the Brookhaven, Miss., Transition Area is amended as follows:

"* * * Brookhaven Municipal * * * is deleted and "* * * Brookhaven-Lincoln County Airport * * *" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in East Point, Ga., on March 29, 1978.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc. 78-9086 Filed 4-5-78; 8:45 am]

[4910-13]

[Airspace Docket No. 77-EA-41]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area: Grundy, Va.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a Grundy, Va., Transition Area, over Grundy Municipal Airport, Grundy, Va. This designation will provide protection to aircraft executing the new instrument approach which has been developed for the airport. An instrument approach procedure requires the designation of controlled airspace to protect instrument aircraft utilizing the instrument approach.

EFFECTIVE DATE: 0901 G.m.t., May 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank Trent, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, telephone 212-995-3391.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to designate a Grundy, Va., Transition Area. The FAA published a Notice of Proposed Rule Making on page 31807 of the FEDERAL REGISTER for June 23, 1977, and gave interested parties time in which to make comments on the NPRM. The Department of the Air Force objected on the grounds that only limited communications exist in the area and would engender delays in determining an aircraft's position due to increased traffic in the instrument approach procedure when added to present traffic in the OB-14 All Weather Low Altitude Route. However, in view of the frequency of use of the OB-14 route, satisfactory communications exist through the Indianapolis Center.

DRAFTING INFORMATION

The principal authors of this document are Frank Trent, Air Traffic Division, and Thomas C. Halloran, Esq., Office of the Regional Counsel.

ADOPTION OF THE AMENDEMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulation (14 CFR Part 71) is amended, effective 0901 G.m.t. May 18, 1978, as published.

Section 307(a), and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(c)); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.

NOTE.—The Federal Aviation Administration had determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Jamaica, N.Y., on March 20, 1978.

L. J. CARDINALI,
Acting Director,
Eastern Region.

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by designating a Grundy, Va, transistion area as follows:

GRUNDY, VA.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the center, 37°13'57" N., 82°07'30" W., of Grundy Municipal Airport, Grundy, Va. and within 2.5 miles each side of the Lonesome Pine, Va. VOR (36°59'03" N., 82°32'17" W.) 053° radial, extending from the 6-mile radius area to 21.5 miles northeast of the Lonesome Pine, Va. VOR

[FR Doc. 78-8943 Filed 4-5-78; 8:45 am]

[4910-13]

[Airspace Docket No. 78-EA-14]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

Alteration of Control Zones and Transition Area: Clarksburg and Lewisburg, W. Va.; Ithaca, Jamestown, and Newburgh, N.Y.; Hot Springs, Quantico, and Weyers Cave, Va.; Franklin, Willow Grove, and North Philadelphia, Pa.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will change the references in these part-time control zones and transition area from "Airman's Information Manual" to "Airport/Facility Directory." It will also change the reference in the Willow Grove, Pa., Control Zone from "Warminster NAF" to "Warminster NADC." A change in publication name and facility designation requires these amendments.

EFFECTIVE DATE: 0901 G.m.t. May 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank Trent, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, telephone 212-995-3391.

SUPPLEMENTARY INFORMATION: Parts 2 and 3 of the Airman's Information Manual will be replaced by a new Airport/Facility Directory, effective May 18, 1978. The operating hours and dates of these part-time controlled airspace designations listed in the Airman's Information Manual, Part 3, Special Notices and so referenced in the description of the designations will now be listed in the new directory in airports remarks section. Also, the name of the Warminster Naval Air Facility (NAF), Warminster, Pa. has been changed to Warminster Naval Air Development Center (NADC). The Willow Grove, Pa. Control Zone and North Philadelphia, Pa., 700-foot floor Transition Area descriptions make reference to Warminster NAF and will require alteration. Since these amendments are editorial in nature and impose no additional burden on any person, notice and public procedure hereon are unnecessary.

DRAFTING INFORMATION

The principal authors of this document are Frank Trent, Air Traffic Division, and Thomas C. Halloran, Esq., Office of the Regional Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Subparts F and G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. May 18, 1978, as follows:

Amend § 71.171 of Part 71 of the Federal Aviation Regulations by amending the description of the Clarksburg, W. Va., Franklin, Pa., Hot Springs, Va., Ithaca, N.Y., Jamestown, N.Y., Lewisburg, W. Va., Newburgh, N.Y., Quantico, Va., and Weyers Cave, Va., Control Zones as follows:

Delete "Airman's Information Manual" and insert in lieu thereof "Airport/Facility Directory".

Amend § 71.171 of Part 71 of the Federal Aviation Regulations by amending the description of the Willow Grove, Pa., Control Zone as follows:

(a) Delete "Warminster NAF" wherever it appears and insert in lieu thereof "Warminster NADC".

(b) Delete "Airman's Information Manual" and insert "Airport/Facility Directory" in lieu thereof.

Amend § 71.181 of Part 71 of the Federal Aviation Regulations by amending the description of the North Philadelphia, Pa., 700-foot floor transition area as follows:

Delete "Warminster NAF" wherever it appears and insert in lieu thereof, "Warminster NADC".

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958, (49 U.S.C. 1348(a) and 1354(c)); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Jamaica, N.Y., on March 21, 1978.

L. J. CARDINALI,
Acting Director,
Eastern Region.

[FR Doc. 78-8944 Filed 4-5-78; 8:45 am]

[4910-13]

[Airspace Docket No. 78-SW-8]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alterations of Control Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the wording in designated part-time control zone descriptions from "Airman's Information Manual" to "Airport/Facility Directory." The designated part-time control zones' effective dates and times will be carried in the "Airport/Facility Directory" instead of the "Airman's Information Manual."

EFFECTIVE DATE: May 18, 1978.

FOR FURTHER INFORMATION CONTACT:

John A. Jarrell, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101, telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

HISTORY

Part-time control zone descriptions contained in subpart F, § 71.171 (43 FR 355) of FAR part 71 include the information that the effective date and time will thereafter be continuously published in the "Airman's Information Manual." On May 18, 1978, this information will be transferred to the new "Airport/Facility Directory" and will no longer appear in the "Airman's Information Manual." This will necessitate deletion of the "Airman's Information Manual" and the substitution therefor of "Airport/Facility Directory" in the descriptions.

THE RULE

This amendment to subpart F of part 71 of the Federal Aviation Regulations (14 CFR part 71) alters the description of designated part-time control zones by deleting the words "Airman's Information Manual" from the text and substituting therefor the words "Airport/Facility Directory."

DRAFTING INFORMATION

The principal authors of this document are John A. Jarrell, Airspace and Procedures Branch, and Robert C. Nelson, Office of the Regional Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart F of part 71 of the Federal Aviation Regulations (14 CFR part 71) as republished (43 FR 355) is amended, effective 0901 G.m.t., May 18, 1978, as follows.

In subpart F, § 71.171 (43 FR 355), the following control zone descriptions are altered by deleting the words "Airman's Information Manual" from the text and substituting therefor the words "Airport/Facility Directory."

Alamogordo, N. Mex.,
Alexandria, La.,
Ardmore, Okla.,
Bartlesville, Okla.,
Clinton, Okla. (Clinton-Sherman Airport),
Clovis, N. Mex.,
Corpus Christi, Tex. (NALF Cabaniss Field),
Cotulla, Tex.,
Dallas, Tex. (Redbird Airport),
Del Rio, Tex.,
Enid, Okla.,
Fort Polk, La.,
Galveston, Tex.,
Greenville, Tex.,
Harlingen, Tex.,
Hobbs, N. Mex.,
Hot Springs, Ark.,
Jonesboro, Ark.,
Kingsville, Tex.,
Laredo, Tex.,
Lubbock, Tex. (Reese AF Base),
Mineral Wells, Tex.,
Paris, Tex.,
Pine Bluff, Ark.,
Santa Fe, N. Mex.,
Silver City, N. Mex.,
Temple, Tex.,
Texarkana, Ark.,

Truth or Consequences, N. Mex.,
Tulsa, Okla. (Riverside Airport),
West Memphis, Ark.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))).)

NOTE.—The FAA has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Since the above changes are only editorial in nature, the issuance of a Notice of Proposed Rulemaking for public comment was omitted.

Issued in Fort Worth, Tex., on March 27, 1978.

PAUL J. BAKER,
Acting Director,
Southwest Region.

[FR Doc. 78-9153 Filed 4-5-78; 8:45 am]

[4910-13]

[Docket No. 17719; Amdt. No. 1108]

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATE: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For examination.—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For purchase.—Individual SIAP copies may be obtained from: 1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By subscription.—Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.

FOR FURTHER INFORMATION CONTACT:

William L. Bersch, Flight Procedures and Airspace Branch (AFS-730), Aircraft Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone 202-426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. § 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the FEDERAL REGISTER expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The principal authors of this document are Rudolph L. Fioretti, Flight Standards Service, and Richard W. Danforth, Office of the Chief Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective on the dates specified, as follows:

By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

* * * *effective June 1, 1978.*

Almyra, AR—Almyra Municipal, VOR/DME-A, Amdt. 3
Macon, GA—Lewis B. Wilson, VOR Rwy 13, Amdt. 6
Macon, GA—Lewis B. Wilson, VOR Rwy 23, Amdt. 1
Madison, IN—Madison Municipal, VOR/DME Rwy 3, Amdt. 3
Lafayette, LA—Lafayette Regional, VOR Rwy 1, Amdt. 13
Ironwood, MI—Gogebic County, VOR Rwy 9, Amdt. 7
Ironwood, MI—Gogebic County, VOR/DME Rwy 27, Amdt. 3
Muskegon, MI—Muskegon County, VOR-A (TAC), Amdt. 12
Traverse City, MI—Cherry Capital, VOR-A (TAC), Amdt. 13
Bluffton, OH—Bluffton, VOR Rwy 23, Amdt. 4
Dayton, TN—Mark Anton, VOR/DME-A, Original
League City, TX—Houston Gulf, VOR/Rwy 13, Amdt. 1
League City, TX—Houston Gulf, VOR/DME Rwy 31, Amdt. 2

* * * *effective May 18, 1978.*

Montgomery, AL—Dannelly Field, VOR Rwy 33, Amdt. 18
Lawrenceville, IL—Lawrenceville-Vincennes Muni., VOR Rwy 18, Amdt. 6
Lawrenceville, IL—Lawrenceville-Vincennes Muni., VOR Rwy 27, Amdt. 1

Lawrenceville, IL—Lawrenceville-Vincennes Muni., VOR Rwy 36, Amdt. 6
Ruston, LA—Ruston Municipal, VOR Rwy 34, Amdt. 1
Ruston, LA—Ruston Municipal, VOR/DME-A, Amdt. 6
Petersburg, MI—Lada, VOR-A, Amdt. 1
Brainerd, MN—Brainerd-Crow Wing County/Walter F. Wieland Field, VOR Rwy 30, Amdt. 6
Brainerd, MN-Brainerd-Crow Wing County/Walter F. Wieland Field, VOR/DME Rwy 12, Amdt. 2
Gideon, MO-Gideon Memorial, VOR Rwy 15, Original
Kearney, NE—Kearney Muni., VOR Rwy 18, Amdt. 6
Kearney, NE—Kearney Muni., VOR Rwy 36, Amdt. 3
Trenton, NJ—Mercer County, VOR Rwy 24, Amdt. 1
Trenton, NJ—Mercer County, VOR-A, Amdt. 8
Reno, NV—Reno Int'l, VOR-D, Amdt. 2
Austin, TX—Tims Airpark, VOR/DME-A, Amdt. 3
Fredericksburg, TX—Gillespie County, VOR/DME-A, Original
Pecos City, TX—Pecos Municipal, VOR Rwy 13, Amdt. 4

The FAA published an amendment in Docket No. 17695, Amdt. No. 1107 to Part 97 of the Federal Aviation Regulations (Vol. 43 FR No. 57, page 11973; dated March 23, 1978 under section 97.23, effective April 6, 1978), which is hereby amended as follows:

Miami, FL Miami International, VOR Rwy 30 original (Ident BSY), change to read VOR Rwy 30 Original (Ident MIA). Also same section amended as follows: Miami, FL, Miami International VOR Rwy 30 Original cancelled, change to read VOR Rwy 30 Original cancelled (Ident BSY).

By amending § 97.25 SDF-LDA SIAPs identified as follows:

* * * *effective June 1, 1978.*

Medford, OR—Medford-Jackson County, LOC/DME BC B, Amdt. 2

By amending § 97.27 NDB/ADF SIAPs identified as follows:

* * * *effective June 1, 1978.*

Tuscaloosa, AL—Tuscaloosa Muni., NDB Rwy 4, Amdt. 5
Arkadelphia, AR—Arkadelphia Municipal, NDB Rwy 4, Amdt. 3
Madison, IN—Madison Municipal, NDB Rwy 3, Amdt. 4
Celina, OH—Lakefield, NDB Rwy 8, Amdt. 1
Oxford, OH—Miami University, NDB Rwy 4, Amdt. 6
Houston, TX—David Wayne Hooks Memorial, NDB Rwy 17R, Amdt. 5
Appleton, WI—Outagamie County, NDB Rwy 3, Amdt. 6
Appleton, WI—Outagamie County, NDB Rwy 11, Amdt. 7
Appleton, WI—Outagamie County, NDB Rwy 21, Amdt. 4
Appleton, WI—Outagamie County, NDB Rwy 29, Amdt. 8

* * * *effective May 18, 1978.*

Montgomery, AL—Dannelly Field, NDB Rwy 9, Amdt. 15
Petersburg, AL—Petersburg, NDB/DME-C, Original, cancelled
Marco Island, FL—Marco Island, NDB Rwy 35, Original
Baytown, TX—Humphrey, NDB Rwy 31, Amdt. 2, cancelled
Hereford, TX—Hereford Municipal, NDB Rwy 20, Original
Houston, TX—Humphrey, NDB Rwy 31, Original

By amending § 97.29 ILS-MLS SIAPs identified as follows:

* * * *effective June 1, 1978.*

Tuscaloosa, Al—Tuscaloosa Muni., ILS Rwy 4, Amdt. 7
Little Rock, AR—Adams Field, ILS Rwy 22, Amdt. 3
Atlanta, GA—Charlie Brown County, ILS Rwy 8R, Amdt. 9
New Orleans, LA—New Orleans International (Moisant Field) ILS Rwy 1, Amdt. 7
Martha's Vineyard, MA—Martha's Vineyard, ILS Rwy 24, Amdt. 3
Houston, TX—William P. Hobby, ILS Rwy 13, Amdt. 2
Appleton, WI—Outagamie County, ILS Rwy 3, Amdt. 7

* * * *effective May 18, 1978.*

Montgomery, AL—Dannelly Field, ILS Rwy 9, Amdt. 20
Montgomery, Al—Dannelly Field, ILS Rwy 27, Amdt. 3
New York, NY—John F. Kennedy Int'l, ILS Rwy 31R, Amdt. 8

* * * *effective May 4, 1978.*

Coatesville, PA—G.O. Carlson Chester County, MLS Rwy 11 (Interim), Amdt. 1

By amending § 97.31 RADAR SIAPs identified as follows:

* * * *effective June 1, 1978.*

Muskegon, MI—Muskegon County, RADAR-1, Amdt. 3
Charleston, SC—Charleston AFB/MUNI., RADAR-1, Amdt. 11

* * * *effective May 18, 1978.*

Detroit, MI—Detroit Metropolitan-Wayne Co., RADAR-1, Amdt. 12
Baytown, TX—Humphrey, RADAR-A, Amdt. 1, cancelled
Houston, TX—Humphrey, RADAR-1, Original

By amending § 97.33 RNAV SIAPs identified as follows:

* * * *effective June 1, 1978.*

Anniston, AL—Anniston-Calhoun County, RNAV Rwy 23, Original
Georgetown, DE—Sussex County, RNAV Rwy 22, Amdt. 1
Moultrie, GA—Moultrie-Thomasville, RNAV Rwy 22, Orig.
Lexington, NC—Lexington Muni., RNAV Rwy 8, Original
Oxford, OH—Miami University, RNAV Rwy 4, Amdt. 1

* * * *effective May 18, 1978.*

Minneapolis, MN—Minneapolis-St. Paul Int'l (Wold-Chamberlain), RNAV Rwy 29R, Amdt. 4
Trenton, NJ—Mercer County, RNAV Rwy 16, Amdt. 2
Trenton, NJ—Mercer County, RNAV Rwy 34, Amdt. 2

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354(a), 1421, and 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Delegation: 25 FR 6489 and Paragraph 802 of Order FS P 1100.1, as amended March 9, 1973.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on March 31, 1978.

JAMES M. VINES,
Chief, Aircraft Programs Division.

NOTE.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 78-8942 Filed 4-5-78; 8:45 am]

[8010-01]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5918; 34-14618]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Resales of Bankruptcy-Related Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and final form amendments.

SUMMARY: The Commission has adopted a rule which establishes a safe harbor under the Securities Act of 1933 for the resale of securities which were either issued in bankruptcy proceedings by a debtor or its successor or which were held in the debtor's portfolio. The purpose of the rule is to provide some degree of certainty as to when a person may resell bankruptcy-related securities without the need for registering them under the Securities Act. In adopting the rule, along with certain related amendments to some of its forms, the Commission emphasized that the rule is not the exclusive means for reselling such securities and will not affect the availability of any exemption for resales under the Act that a person might be able to rely upon.

EFFECTIVE DATE: May 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Peter J. Romeo, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-1240.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of Rule 148 (17 CFR 230.148) under the Securities Act of 1933 ("1933 Act") (15 U.S.C. 77a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)) and the adoption of certain related amendments to Forms 8-K (17 CFR 249.308), 10-Q (17 CFR 249.308a), and 10-K (17 CFR 249.310) under the Securities Exchange Act of 1934 ("1934 Act") (15 U.S.C. 78a et seq., as amended by Pub. L. 94-29 (June 4, 1975)). The new rule establishes objective standards for the resale without registration under the 1933 Act of two categories of securities relating to bankruptcy proceedings: (1) Securities issued by a debtor or his successor to creditors and others pursuant to a plan of reorganization, arrangement or liquidation; and (2) securities issued by someone other than the debtor which were held in the debtor's portfolio.

Background and Purpose

On September 16, 1977 the Commission published Release No. 33-5865 (41 FR 47848) soliciting public comments on proposed Rule 148. In response to the Commission's invitation, fifteen letters containing many helpful comments were received. On the basis of these comments and its own review of the proposed rule, the Commission has determined to amend the rule in certain respects, as indicated herein, and to adopt it in its revised form. In a related action, the Commission also has adopted amendments to Items 3 and 6 of Form 8-K and amendments to the front cover pages of Forms 10-Q and 10-K.

As indicated in Release No. 33-5865, the purpose of Rule 148 is to provide a safe harbor from the registration provisions of the 1933 Act for the resale of certain types of securities relating to bankruptcy proceedings. The necessity for the rule arises from the fact that there is considerable uncertainty on the part of many holders of bankruptcy-related securities as to when it is necessary to register such securities for resale under the 1933 Act.

Generally, when attempting to resell securities acquired in a bankruptcy proceeding, the holders thereof seek to rely on the exemption from registration provided by Section 4(1) of the 1933 Act. That section states in essence that transactions by any person who is not an "issuer, underwriter, or dealer" need not be registered. Since most persons who seek to resell securities clearly are not issuers or dealers, the majority of questions arising under Section 4(1) focus on the term "underwriter." The nature of these questions generally is under what circumstances will a person not be deemed an underwriter and consequently be free to resell his securities without registration.

The term "underwriter" is broadly defined in Section 2(11) of the Act.[1] Among other things, Section 2(11) States that a person who purchased his securities "with a view to * * * distribution" shall be deemed an underwriter. The interpretation of Section 2(11) traditionally has focused on these quoted words. They create difficulty, however, because they are subjective in nature and appear to require a determination as to the security holder's purpose in acquiring his securities. Since it is difficult to ascertain a purchaser's state of mind at the time of acquisition, it generally is necessary to look to subsequent acts and circumstances to formulate an opinion as to whether he purchased with a view to distribution. Thus, the use of objective standards relating to a purchaser's subsequent acts and circumstances would be useful in making such a determination.

In recognition of the utility of objective standards insofar as the definition of "underwriter" is concerned, the Commission in 1972 adopted Rule 144 (17 CFR 230.144) under the 1933 Act.[2] Basically, the rule establishes certain objective standards which, if satisfied, permit holders of "restricted securities"[3] to sell them without being deemed underwriters of those securities. There are four basic requirements inherent in these standards: (1) The securities must have been held by the seller for at least 2 years; (2) the amount of securities that can be sold during any 6-month period must not exceed 1 percent of the outstanding securities of that class; (3) there must be current information available to the public about the issuer of the security; and (4) the securities must be sold in brokers' transactions. Generally, it is the Commission's view that a person who complies with the above requirements has satisfactorily demonstrated that he did not acquire his securities with the view to distribution and that the interests of investors will not be harmed by permitting him to resell them without registration.

Although the Commission's experience with Rule 144 generally has been favorable, the rule itself is somewhat limited in its application. Basically, it can be used to sell restricted securities only, which by definition must have been acquired in a transaction or chain of transactions not involving any public offering. As a result, securities issued by a debtor or successor thereof in bankruptcy proceedings frequently do not qualify for resale under Rule 144 because they were issued in a public, non-registered offering in reliance upon some exemption from registration, such as that provided by Section 264 or Section 393 of the Bankruptcy Act. (11 U.S.C 664 and 793). Thus, many persons who acquire such securities are left in a state of uncertainty similar to that which existed prior to the adoption of Rule 144 insofar as resales of their securities are concerned. Accordingly, in recognition of the limited applicability of Rule 144 to bankruptcy situations and the fact that there is a need to provide some degree of certainty in connection with resales of bankruptcy-related securities, the Commission has determined to adopt Rule 148.

Non-Exclusive Nature of the Rule

Several persons who commented on Rule 148 expressed the view that the 1933 Act does not provide a basis for adopting a rule which has the effect of restricting resales following public issuances of securities that are either registered or are exempt from registration. These persons believe that Rule 148 will suffer from the same perceived defects as its predecessors in the "140 series" of rules (i.e., Rules 144-147 (17 CFR 230.144-147)) in that it will create a presumption that persons who sell securities without complying with its provisions are underwriters unless they can satisfactorily demonstrate otherwise. The commentators point out that there is no basis in the 1933 Act for a presumptive underwriter doctrine of this nature, and that Rule 148 and the other rules in the "140 series" are therefore contrary to the statute.

The Commission recognizes that Rule 148 does place restrictions on resales of securities, as do other rules in the "140 series." These restrictions, however, are deemed to be in keeping with the purpose and underlying policy of the 1933 Act to protect investors. They seek, among other things, to prevent disruptions in the markets for securities and to assure that adequate information about the issuers of securities sold under the rule will be available to investors. Moreover, and most important, the restrictions are not compulsory and need not be com-

---

[1] Section 2(11) reads in pertinent part as follows: The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking * * *

[2] See in this regard, Release No. 33-5223 (37 FR 596) dated January 11, 1972.

[3] The term "restricted securities" is defined in paragraph (a)(3) of Rule 144 to mean: Securities acquired directly or indirectly from the issuer thereof, or from an affiliate of such issuer, in a transaction or chain of transactions not involving any public offering or from the issuer in a transaction in reliance on Rule 240 under the Act or which were issued by an issuer in a transaction in reliance on Rule 240 and were acquired in a transaction or chain of transactions not involving any public offering.

plied with in those instances where persons may rely on a specific exemption for resales, such as that provided by Section 4(1) of the Act. The rule seeks only to provide a safe harbor for resales and thereby remove uncertainty as to the application of the registration provisions of the 1933 Act that might exist in the minds of some persons who wish to resell the types of securities covered by the rule.

It appears to the Commission that the negative views concerning the statutory authority for Rule 148 are largely based on the faulty premise that the rule will be the exclusive means by which a person may resell bankruptcy-related securities without registration. As noted above, however, compliance with Rule 148 will not be compulsory, and the Commission has never intended that it (nor indeed any of the rules in the "140 series") be considered the only method by which persons may safely resell the types of securities mentioned therein.

In order to make its position concerning the non-exclusive nature of the rule as clear and emphatic as possible, the Commission has inserted a paragraph at the end of Rule 148 which specifically states that the rule "is not the exclusive means for reselling (bankruptcy-related) securities" and that it "does not eliminate or otherwise affect the availability of any exemption for resales under the Securities Act that a person or entity may be able to rely upon." Similar statements also are contained in Rules 144, 146 and 147 under the Act. By calling attention to these statements, the Commission is hopeful that there will no longer be any doubt that a person will not be deemed to be, or presumed to be, an underwriter with respect to resales of securities merely because of non-compliance with any of the rules in the "140 series."

Synopsis of Rule

To a large extent, the provisions of Rule 148 are modeled after Rule 144. There are, however, several significant variations designed to reflect the unique circumstances of bankruptcy situations. The chief variation is the lack of a holding period requirement. Such a requirement has not been deemed appropriate because of the special, involuntary circumstances under which a debtor's securities frequently are acquired. Other variations include different volume limitations and current public information requirements and the lack of a notice requirement with respect to resales under the rule.

PRELIMINARY NOTE

The operative provisions of the rule have been preceded by a preliminary note, which provides a brief summary of the purpose and scope of the rule. A second preliminary note dealing with the non-exclusive nature of the rule had been included in the proposed version but has been deleted. The gist of it, however, has been moved to the text of the rule itself and included in a new paragraph (e), in order to place greater emphasis on its contents.

DEFINITIONS

Paragraph (a) of the rule contains definitions of six terms which appear throughout the rule. These definitions are self-explanatory to a large extent. However, some of them have been revised in response to the public comments, as explained below.

The term "debtor" is defined in the rule as a person or entity concerning which a case has been commenced under either the Bankruptcy Act (11 U.S.C. 1, et seq.) or the Securities Investor Protection Act ("SIPA") (15 U.S.C. 78aaa, et seq.), as well as any entity over which the Federal Deposit Insurance Corporation ("FDIC") has been appointed as a receiver. The definition has been altered considerably from the proposed version in order to broaden its coverage. Thus, the words "person or entity" have been substituted for "individual, partnership or corporation" (the words used in the proposed version) because their wider applicability will remove all doubt that entities such as real estate investment trusts and unincorporated companies and associations will be within the ambit of the rule. In addition, the definition has been expanded to make it clear that entities which are involved in proceedings under SIPA, and entities over which the FDIC has been appointed as a receiver will be covered. The latter change will permit SIPA trustees and the FDIC to sell pursuant to the rule portfolio securities held by entities whose assets are controlled by them.

The definition for the term "securities issued under a plan" also has been expanded to cover not only securities issued by the debtor or any successor thereof under a plan, but also securities issued upon the exercise of any right to convert or exchange securities issued under a plan. This change was made in response to the views of some commentators that the proposed definition for this term was too narrow.

Finally, a definition for the term "affiliate" has been added to the rule. The definition used is modeled after similar definitions set forth in Rules 144(a)(1) and 405 (17 CFR 230.405) under the 1933 Act, and it focuses on whether the person or entity under scrutiny as a possible affiliate "directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with (the) debtor." The definition has been included because paragraph (c) of the rule now states that securities of affiliates which are held in the debtor's portfolio may not be resold in reliance upon the rule.

It should be noted that the determination whether a person or entity is an affiliate of the debtor is a factual one that must be made on a case-by-case basis. Thus, there are no preconceived guidelines, such as a fixed minority percentage of the debtor's stock owned by a possible affiliate, that will be conclusive on this issue.

SECURITIES ISSUED UNDER A PLAN

Paragraph (b) sets forth the standards for resale that will be applicable to one of the two categories of securities that may be sold under the rule (viz., securities issued by a debtor or its successor under a plan). The introductory portion of the paragraph makes it clear that the rule will provide a safe harbor for the resale of such securities, provided they are issued in a transaction exempt from registration under the 1933 Act and provided that the three conditions set forth in the paragraph are satisfied.

1. VOLUME LIMITATION

The first of the three conditions for resale is set forth in paragraph (b)(1) of the rule and it limits the amount of securities that can be sold during any six-month period under the rule. The paragraph provides that the amount sold during such a period shall not exceed one percent of the sum of the number of shares or other units of the class issued and outstanding and the number of shares or units reserved for future issuance in respect of claims and interests filed and allowed under the plan.

In its adopted form, the volume limitation provision is somewhat less restrictive than the version proposed for public comment. The principal change deals with the base upon which the one percent limit will be computed. In its proposed form, the base consisted of the "shares or other units of the class outstanding upon distribution under the plan." Some commentators pointed out that in the early period after a reorganization securities are issued almost daily, with the result that the number of outstanding securities is constantly changing. In response to these comments, the base has been revised to consist not only of the shares or units issued and outstanding, but also those reserved for future issuance under the plan. It is believed that this change will provide from the outset a relatively fixed base upon which the volume limitation may be computed.

The Commission also has added to the volume limitation provision a reference to the source (viz., the most recent report or statement published by the issuer) where information may be obtained with respect to the com-

putation of the one percent limit. Finally, the Commission has included at the end of the volume limitation paragraph a statement that, for purposes of determining the volume limitation, all securities of the same class sold under the rule by persons or entities acting in concert shall be aggregated.

In connection with the volume limitation set forth in paragraph (b)(1), the Commission wishes to take note of the views of some of the commentators that the one percent limit may perhaps be too restrictive in the bankruptcy context. While the Commission does not wish to restrict unnecessarily the amount of securities that may be resold in reliance upon the rule, it does not believe there is an empirical basis for raising the one percent limit at this time.

In this connection, however, the Commission presently is engaged in a study to determine whether the volume limitations of Rule 144, the rule upon which Rule 148 is largely modeled, can be relaxed somewhat. Should the Commission deem it appropriate to revise those limitations, it anticipates making corresponding changes in the volume limitation contained in Rule 148.

2. CURRENT PUBLIC INFORMATION

The second condition for resale under the rule is contained in paragraph (b)(2), and it relates to the adequacy of information available concerning the issuer of the securities to be sold. The provision is intended to assure that there will be current information about the issuer available to the investing public at the time any sales of its securities are made under the rule.

The public information requirement in paragraph (b)(2) states that an issuer who is subject to the registration and/or periodic reporting provisions of the 1934 Act must have filed with the Commission all documents and reports required by those provisions subsequent to the distribution of securities under the plan. The paragraph further states that issuers who are not subject to the registration and/or periodic reporting provisions of the 1934 Act will be deemed to have satisfied the public information requirement if they make available to the public at the time sales are made under the rule the information specified in clauses (1) to (14), and clause (16) of Rule 15c2-11(a)(4) (17 CFR 240.15c2-11(a)(4)) under the 1934 Act.

There are two essential differences between the public information requirement in rule 148 and its counterpart in Rule 144. First, unlike Rule 144, there will be no necessity in Rule 148 for the issuer to have been subject to the periodic reporting provisions of the 1934 Act for at least 90 days before sales may be effected under the rule. The 90-day requirement has been omitted from Rule 148 because the special circumstances attendant to bankruptcy situations do not appear to justify a waiting period such as that required by Rule 144.

The second major difference is that Rule 148 will not require the issuer to have filed all reports required by the 1934 Act during the 12 months preceding the sale or such shorter period that the issuer was required to file such reports. The principal reason for omitting this requirement is that many debtors might be unable to comply with it, since they might not have funds available for the preparation and filing of such reports during the period they are involved in bankruptcy proceedings. Thus, the rule requires only that all reports and documents required subsequent to the distribution of securities under the plan have been filed.

It should be noted that although the rule does not require, as a condition to its availability, that the issuer have filed all reports and documents required prior to the distribution of securities under the plan, this should not be construed to mean that such an issuer is thereby excused from filing such reports and documents. The obligation under the 1934 Act to file all reports and documents will continue to exist, and nothing in Rule 148 provides an exemption from that obligation.

Although several minor revisions of a clarifying nature have been made to the version of the public information requirement that was proposed for comment, there has been only one substantive change. This change, which was made in response to one of the comments from the public, makes it clear that a seller of securities under Rule 148 may rely upon a written statement from the issuer or a statement in the issuer's most recent report filed with the Commission concerning the issuer's compliance with the public information requirement. This change has necessitated the adoption of amendments to the front cover pages of Forms 10-Q and 10-K, which are discussed in a subsequent part of this release.

3. MANNER OF SALE

The third condition for the resale of securities under the rule is contained in paragraph (b)(3), and it requires that the securities be sold in brokers' transactions within the meaning of section 4(4) of the 1933 Act. Paragraph (b)(3) also restricts the person selling the securities from either: (1) Soliciting or arranging for the solicitation of orders to buy the securities in anticipation of or in connection with such transactions, or (2) making any payment in connection with the offer or sale of the securities to any person other than the broker who executes the order to sell the securities.

The brokers' transaction requirement is the same in all material respects as its counterpart in Rule 144. It has been included in Rule 148 because it will provide some degree of assurance that sales made in reliance upon the rule will be executed in an orderly manner and with all of the protections afforded by brokers' transactions.

Some commentators suggested that certain exceptions be made to the brokers' transaction requirement. For instance, some thought it ought not to apply to persons receiving less than one percent of the class issued under the plan. Another stated that the requirement should not apply where no brokerage transactions are possible (e.g., where there is no public market for the debtor's securities). Finally, one commentator expressed the view that block transactions should be exempted from the requirement.

The Commission has given consideration to the above comments, but has determined that it would not be in the public interest to incorporate any of them into the rule. In its view, the protections afforded by brokers' transactions outweigh the limited benefits that might be gained from including the above exceptions in the rule.

PORTFOLIO SECURITIES

Paragraph (c) sets forth the standards for resale that will apply to the second type of securities covered by the rule (viz., restricted securities of issuers other than the debtor and any affiliate or successor thereof). The paragraph states essentially that a debtor, debtor-in-possession, court-appointed trustee or court-appointed receiver for the debtor shall not be deemed an underwriter with respect to resales of such securities provided three conditions are met: (1) The securities were owned by the debtor on the date a case concerning it was commenced under the Bankruptcy Act; (2) such resales are made in accordance with the various limitations contained in Rule 144, with the exception of the two-year holding period requirement; and (3) the resales are authorized by the court.

The two-year holding period requirement of Rule 144 has not been included in the rule in order to permit the liquidation of the debtor's portfolio to proceed without undue difficulty and thereby expedite the bankruptcy proceedings. The lack of such a requirement, however, does not mean that a debtor, forseeing the onset of bankruptcy, may load his portfolio with "cheap stocks" for subsequent resale under the rule, thereby avoiding the Rule 144 holding period requirement. Attempted abuses of this nature will not be permitted, as indicated in para-

graph (d) of the rule, which is discussed in the next section of this release.

In response to some of the comments, paragraph (c) has been revised in certain respects to clarify its applicability. Thus, the paragraph now states that the rule will not be available for the resale of an affiliate's securities held in the debtor's portfolio, but it may be used by a debtor-in-possession or a court-appointed receiver to effect resales of portfolio securities. Finally, the paragraph has been amended to permit trustees under the Securities Investor Protection Act, as well as the Federal Deposit Insurance Corporation, to utilize the rule for resales of portfolio securities held by debtors whose assets are under their control.

CAUTIONARY PROVISION

Paragraph (d) of the rule simply cautions persons who may wish to utilize the rule for plans or schemes designed to evade the registration provisions of the 1933 Act that the rule will not be available for such purposes. This, even if such individuals comply with all of the technical requirements of Rule 148, the rule will not be available for activities of the type mentioned above.

NON-EXCLUSIVE RULE PROVISION

As previously indicated herein, the final paragraph of the rule (i.e., paragraph (e) restates the Commission's position that Rule 148 is not the exclusive means for reselling bankruptcy-related securities and that it does not affect the availability of any exemption for resales under the 1933 Act that a person may be able to rely upon.

RELATED AMENDMENTS TO FORMS

In connection with the public information requirement set forth in paragraph (b)(2) of the rule, the Commission has adopted certain amendments to Forms 8-K, 10-Q and 10-K. The amendments are intended to provide information about the bankruptcy proceedings in which the debtor has been involved and to provide a ready source for determining whether the issuer of the securities being resold under Rule 148 is in compliance with the public information requirement of paragraph (b)(2).

FORM 8-K

The Commission has amended Items 3 and 6 of Form 8-K relating to bankruptcy proceedings. Heretofore, Item 3 has required only that information about such proceedings be filed with the Commission when they are commenced. It is the Commission's view, however, that information about bankruptcy proceedings also should be furnished after they have been completed for all practical purposes. Thus, the Commission has added a new Item 3(b) to Form 8-K which requires that the following information be furnished within 15 days after an order confirming a plan of reorganization, arrangement or liquidation has been entered: (1) The identity of the court or governmental authority which entered the order; (2) the date the order was entered; (3) a fair summarization of the material features of the plan; (4) the number of shares or other units of the debtor or its successor issued and outstanding, the number reserved for future issuance under the plan, and the aggregate total of such numbers; and (5) information as to the assets and liabilities of the debtor as of the date the order confirming the plan was entered, or a date as close thereto as possible.

Two significant changes were made to Item 3(b) from the proposed version in response to the public comments. The first involved various revisions throughout the item designed to make it clear that the entry of an order confirming a plan (as opposed to the finalization of such an order after the period for appeal has expired) will trigger the filing requirement of Item 3(b). This change will resolve any doubt as to which event will require the filing of the 3(b) information, while at the same time assure that information about a plan will be in the public domain as soon as possible. Of course, if an appeal of an order confirming a plan is taken by an interested party and the order does not become final as originally scheduled, subsequent 8-Ks can be filed to disclose this fact as well as any other relevant information.

The second significant change involves a revision to paragraph (4) of the item, which provides information about the base upon which the volume limitation of Rule 148 will be computed. The revision to this item is intended to correspond to the change made in paragraph (b)(1) of the rule to the base figure.

The Commission also has amended Item 6(b) of Form 8-K relating to the exhibits that must be filed with the form. As revised, the item will require an issuer to attach to the 8-K copies of any plan described in Item 3(b), as well as copies of the order confirming the plan.

In connection with the above-described amendments to Form 8-K, it should be noted that paragraph (b)(2)(i) of Rule 148 states that the information specified in Item 3(b) of 8-K must be filed with the Commission before any offers or sales of securities of reporting companies can be made in reliance upon the rule.

FORMS 10-Q AND 10-K

As previously indicated, the Commission has revised paragraph (b)(2)(i) of Rule 148 to permit sellers of securities to rely on a statement in the issuer's most recent 1934 Act report concerning the issuer's compliance with the informational requirements of the rule. To implement this change fully, it has become necessary to amend the front cover pages of Forms 10-Q and 10-K so that such a statement may be made there by issuers. The statement is similar to one already required to be made for Rule 144 information purposes. However, the statement for Rule 148 purposes need be provided only for the five-year period following the termination of the issuer's involvement in bankruptcy proceedings. The reason is that it is unlikely many persons would be utilizing Rule 148 for the resale of an issuer's securities after the five-year period has elapsed, and no useful purpose would be served by requiring an issuer to continue making the requisite statement for an indefinite period.

TEXT OF RULE 148

Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding a new § 230.148 to read as follows:

§ 230.148 Persons deemed not to be underwriters of securities issued or sold in connection with bankruptcy proceedings.

PRELIMINARY NOTE.—Rule 148 relates to two categories of securities: (1) Securities which were issued in bankruptcy proceedings by a debtor or its successor; and (2) securities which were in the debtor's portfolio either at the time proceedings were commenced under their Bankruptcy Act or the Securities Investor Protection Act, or at the time the Federal Deposit Insurance Corporation ("FDIC") was appointed as a receiver for the debtor's assets. Its purpose is to establish standards which, if met, will enable the holder of such securities to sell them without registration under the Securities Act of 1933 and without being deemed an underwriter under section 2(11) of the Act. The standards set forth in the rule are intended to provide some degree of assurance that there will be current information about the issuer available in the marketplace at the time the securities are sold and that the trading market for such securities will not be disrupted by such sales.

(a) *Definitions.* The following definitions shall apply for the purposes of this rule:

(1) The term "Bankruptcy Act" means the Federal Bankruptcy Act.

(2) The term "debtor" means a person or entity concerning which a case has been commenced under either the Bankruptcy Act or the Securities Investor Protection Act, as well as an entity over which the FDIC has been appointed as a receiver.

(3) The term "plan" means a plan for the payment of debts and other claims filed pursuant to the Bankruptcy Act and confirmed by the bankruptcy court.

(4) The term "securities issued under a plan" shall include securities issued by the debtor or any successor thereof under a plan, as well as securities issued upon the exercise of any right to convert or exchange securities issued under a plan.

(5) The term "restricted securities" means securities acquired directly or indirectly from the issuer thereof, or from an affiliate of such issuer, in a transaction or chain of transactions not involving any public offering or from the issuer in a transaction in reliance on Rule 240 (§ 230.240) under the Securities Act or which were issued by an issuer in a transaction in reliance on Rule 240 (§ 230.240) and were acquired in a transaction or chain of transactions not involving any public offering.

(6) An "affiliate" of the debtor is a person or entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such debtor.

(b) *Securities issued under a plan.* A person or entity who acquires securities issued under a plan in a transaction exempt from the registration requirements of the Securities Act of 1933 shall not be deemed an underwriter within the meaning of Section 2(11) of the Act with respect to resales of such securities if all of the following conditions are met:

(1) *Volume limitation.* The amount of securities sold for the account of such person or entity during any six-month period shall not exceed one percent of the sum of the number of shares or other units of the class issued and outstanding and the number of shares or units of the class reserved for future issuance in respect of claims and interests filed and allowed under the plan, as shown by the most recent report or statement published by the issuer. For the purpose of determining the limitation on the amount of securities sold, all securities of the same class sold under this rule by persons or entities acting in concert shall be aggregated.

(2) *Current public information.* The issuer of the securities shall make available to the public current information about itself and its activities. Such information shall be deemed available only if either of the following conditions is met:

(i) *Filing of reports.* The issuer is subject to the registration requirements of section 12 of the Securities Exchange Act of 1934 and/or the periodic reporting requirements of sections 13 or 15(d) of the Exchange Act and has filed all documents and reports required by those sections to be filed subsequent to the distribution of securities under the plan. The person or entity for whose account the securities are to be sold shall be entitled to rely upon a written statement from the issuer or a statement in whichever is the most recent report filed by the issuer that such issuer has filed all documents and reports required to be filed by sections 12, 13 or 15(d) of the Exchange Act subsequent to the distribution of securities under the plan, unless such person or entity has reason to believe that the issuer has not complied with such requirements. In no event, however, shall any offers or sales of the issuer's securities be made in reliance upon this rule unless the information specified in Item 3(b) of Form 8-K (§ 249.308) has been filed by the debtor with the Commission.

(ii) *Other public information.* The issuer is not subject to the registration and reporting requirements of sections 12, 13 or 15(d), but there is publicly available the information concerning the issuer specified in clauses (1) to (14), inclusive, and clause (16) of paragraph (a)(4) of Rule 15c2-11 (§ 240.15c2-11) under the Exchange Act.

(3) *Manner of sale.* The securities shall be sold in brokers' transactions within the meaning of section 4(4) of the Securities Act and the person selling the securities shall not (i) solicit or arrange for the solicitation of orders to buy the securities in anticipation of or in connection with such transactions, or (ii) make any payment in connection with the offer or sale of the securities to any person other than the broker who executes the order to sell the securities. For the purposes of this rule, the term "brokers' transactions" shall be deemed to include transactions of the type described in Rule 144(g) (§ 230.144(g)) under the Securities Act.

(c) *Securities held in the debtor's portfolio.* A debtor, debtor-in-possession, court-appointed trustee or court-appointed receiver for the debtor shall not be deemed an underwriter with respect to resales of restricted securities of an issuer other than the debtor or any affiliate or successor thereof, provided that:

(1) Such securities were owned by the debtor either on the date a case concerning it was commenced under the Bankruptcy Act or the Securities Investor Protection Act, or on the date the FDIC was appointed as a receiver for the debtor's assets;

(2) Such resales are made in accordance with the provisions of paragraphs (c), (e), (f) and (g) of Rule 144 (§ 230.144) under the Securities Act; and

(3) Such resales are authorized by the court, except that this condition shall not apply to resales made by the FDIC in its capacity as a receiver for the debtor's assets.

(d) *Limited availability.* This rule shall not be available to any person or entity with respect to any transaction which, although in technical compliance with the provisions of the rule, is a step in the consummation of a plan or scheme to evade the registration requirements applicable to the distribution or redistribution of securities to the public.

(e) *Non-exclusive rule.* Although this rule provides a means for reselling bankruptcy-related securities without registration under the Securities Act, it is not the exclusive means for reselling such securities in that manner. Therefore, it does not eliminate or otherwise affect the availability of any exemption for resales under the Securities Act that a person or entity may be able to rely upon.

(Secs. 2(11), 4(1), 4(4), 19(a), 48 Stat. 74, 77, 85; secs. 201, 203, 209, 210, 48 Stat. 905, 906, 908; secs. 1—4, 6, 68 Stat. 683, 684; sec. 12, 78 Stat. 580; (15 U.S.C. 77b(11), 77d(1), 77d(4), 77s(a).)

TEXT OF AMENDMENTS TO FORMS

I. Items 3 and 6 of Form 8-K are revised to read as follows:

§ 249.308 Form 8-K, current reports.

* * * * *

Item 3. *Bankruptcy or Receivership.*

(a) [No change].

(b) If an order confirming a plan of reorganization, arrangement or liquidation has been entered by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the registrant or its parent, furnish the following:

(1) The identity of the court or governmental authority;

(2) The date the order confirming the plan was entered by the court or governmental authority;

(3) A fair summarization of the material features of the plan and, pursuant to Item 6 of this form relating to exhibits, a copy of the plan as confirmed;

(4) The number of shares or other units of the registrant or its parent issued and outstanding, the number reserved for future issuance in respect of claims and interests filed and allowed under the plan, and the aggregate total of such numbers; and

(5) Information as to the assets and liabilities of the registrant or its parent as of the date the order confirming the plan was entered, or a date as close thereto as practicable. Such information may be presented in the form in which it was furnished to the court or governmental authority.

* * * * *

Item 6. *Financial Statements and Exhibits.*

(a) [No change].

(b) *Exhibits.* Subject to the rules as to incorporation by reference, the following documents shall be filed as exhibits to this report:

1. [No change].

2. [No change].

3. Copies of any plan of reorganization, arrangement or liquidation described in Item 3(b) and the order confirming the plan.

II. The front cover page of Form 10-Q is revised to read as follows:

§ 249.308a Form 10-Q, for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934.

(The following is to be inserted at the bottom of the front cover page, immediately above the phrase "APPLICABLE ONLY TO CORPORATE ISSUERS.")

If the registrant has been involved in bankruptcy proceedings during the preceding five years, indicate by check mark whether it has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.

Yes—— No——

III. The front cover page of Form 10-K is revised to read as follows:

§ 249.310 Form 10-K, annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

(The following is to be inserted at the bottom of the front cover page, immediately above the phrase "APPLICABLE ONLY TO CORPORATE ISSUERS.")

If the registrant has been involved in bankruptcy proceedings during the preceding five years, indicate by check mark whether it has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.

Yes—— No——

(Secs. 13, 15(d), 23(a), 48 Stat. 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 6, 78 Stat. 569, 570-574; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1479; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 47; (15 U.S.C. 78m, 78o(d), 78w(a)).)

AUTHORITY

Rule 148 has been adopted by the Commission pursuant to the Securities Act of 1933, particularly Sections 2(11), 4(1), 4(4), and 19(a) thereof. Items 3 and 6 of Form 8-K and the front cover pages of Forms 10-Q and 10-K have been amended pursuant to the Securities Exchange Act of 1934, particularly Sections 13, 15(d) and 23(a) thereof.

OPERATION OF THE RULE AND FORMS AMENDMENTS

Rule 148 and the amendments to Forms 8-K, 10-Q and 10-K described herein will become effective on May 1, 1978. The rule will operate prospectively only and will not be available for transactions which take place prior to its effective date. Further, the staff will issue interpretative letters to assist persons in complying with the rule, but will consider requests for "no-action" letters only on an infrequent basis and in the most compelling circumstances.

Finally, because the revisions to Rule 148 and Form 8-K generally represent a relaxation or clarification of provisions previously published for comment pursuant to the Administrative Procedure Act (5 U.S.C. 533), the Commission believes that none of them need to be republished for comment under the Act. Further, the Commission is of the view that the amendments to the front cover pages of Forms 10-Q and 10-K need not be published for comment under the Act, since they do not impose a new substantive burden on issuers.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 29, 1978.

[FR Doc. 78-9055 Filed 4-5-78; 8:45 am]

[1505-01]

[Release No. 34-14563; File No. S7-613]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND THE GENERAL RULES AND REGULATIONS THEREUNDER

Securities Transactions by Members of National Securities Exchanges

Correction

In FR Doc. 78-7235, appearing at page 11542 in the issue for Friday, March 17, 1978, make the following corrections:

(1) On page 11543, in the third column, at the top, the first two lines should appear at the end of the text for footnote 11.

(2) On page 11553, in the third column, in § 240.11a1-2, in the undesignated introductory paragraph, delete the period at the end of the last line.

(3) On page 11554, in the first column, in § 240.11a1-2 paragraph (b), in the sixth line, after "member,", the phrase "the member would have been" should begin a new line and be set flush with the margin.

[4810-22]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 78-102]

PART 145—MAIL IMPORTATIONS

Examination of Sealed Letter Class Mail by Customs Officials

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule and policy statement.

SUMMARY: This document contains an amendment to the Customs Regulations and a policy statement relating to the examination of sealed letter class mail by Customs officials. The amendment and policy statement are being made because of a recent United States Supreme Court decision which upheld the right of Customs officials to examine sealed letter class mail in certain circumstances. It is intended that the amendment and policy statement will offer guidance as to when and how Customs will open and examine sealed letter class mail.

EFFECTIVE DATE: May 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Stuart P. Seidel, Office of the Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5476.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 145.3 of the Customs Regulations (19 CFR 145.3) provides that no Customs officer or employee shall read, or authorize or allow any other person to read, any correspondence contained in sealed letter mail unless a search warrant has been obtained. In *United States* v. *Ramsey*, 97 S. Ct. 1972 (1977), the U.S. Supreme Court affirmed the right of Customs officials to open and examine sealed letter class mail without first obtaining a search warrant under certain circumstances.

In the *Ramsey* case, a Customs officer inspecting a sack of incoming international mail from Thailand spotted eight bulky envelopes which he believed might contain merchandise. All of the envelopes appeared to have been typed on the same typewriter, were addressed to different locations in Washington, D.C., felt as if there were something other than plain paper inside, weighed three to six times the normal weight of a letter, and came from a country which is a known source of narcotics. Upon in-

spection, the envelopes were discovered to contain heroin.

The opening of these letters without first obtaining a search warrant was challenged as unconstitutional. The Supreme Court rejected this assertion and held constitutional the statute, R.S. 3061 (19 U.S.C. 482), which authorizes the opening of envelopes coming into the United States with respect to which a Customs official may have reasonable cause to suspect there is merchandise which is subject to duty or which is imported contrary to law. The Court also found that the circumstances under which the letters were opened provided "reasonable 'cause to suspect' that there was merchandise or contraband in the envelopes."

The Commissioner of Customs determined that, inasmuch as § 145.3 of the Customs Regulations was silent as to when the opening of sealed letter class mail is authorized, that section should be amended to reflect the statutory standards as interpreted in the *Ramsey* case and the existing Customs practice on the subject. Therefore, on July 28, 1977, a notice of proposed rulemaking which would amend § 145.3 was published in the FEDERAL REGISTER (42 FR 38393). The notice proposed to add to § 145.3 a provision that no Customs officer or employee would open sealed letter class mail which appeared to contain only correspondence unless a search warrant had been obtained in advance of the opening. It also proposed to add a provision that Customs officers or employees could open and examine sealed letter mail which appeared to contain matter in addition to, or other than, correspondence, provided they had reasonable cause to suspect the presence of merchandise or contraband.

The notice also contained a proposed policy statement which set forth the policies which the Customs Service would follow in examining sealed letter class mail. The policy statement supplemented the regulations by providing guidance as to the circumstances which constitute reasonable cause to suspect that merchandise or contraband is contained in sealed letter class mail.

Interested parties were given until September 26, 1977, to submit data, views, or arguments in regard to the proposals. Several comments were received in response to the proposals. A discussion of the substantive comments follows:

DISCUSSION OF SUBSTANTIVE COMMENTS

WHAT MAIL IS SUBJECT TO CUSTOMS EXAMINATION

1. *International transit mail.* One comment pointed out that the proposed rule and policy statemnent could be read so as to subject international transit mail to Customs examination. International transit mail is that mail which passes through the United States but is not to be delivered therein. This point is well taken. Section 145.2 therefore has been amended to make it clear that mail must be destined for delivery in the Customs territory of the United States or in the U.S. Virgin Islands to be considered subject to Customs examination.

2. *Virgin Islands mail.* In one of the comments submitted, the authority of the Customs Service to open first class mail arriving in the U.S. Virgin Islands from the United States was questioned. It was asserted that such opening could not be done merely upon finding a reasonable cause because of 39 U.S.C. 3623(d), which provides that first class mail "of domestic origin" shall not be opened unless authorized by a search warrant or by the addressee, or except by the Postal Service to determine the delivery address.

While maintaining that it is authorized to examine all mail coming into the U.S. Virgin Islands from the Customs territory of the United States, the Customs Service agrees that the legal authority to open first class mail merely upon the finding of reasonable cause to suspect the presence of merchandise or contraband is uncertain. For this reason, and because the incidence of openings of first class mail arriving in the U.S. Virgin Islands from the Customs territory of the United States would be relatively low, the Customs Service will refrain from opening such mail unless authorized to do so. Section 145.3 therefore had been amended to provide for this exception.

3. *Only at "border"?* One comment asserted that without a search warrant, Customs has no authority to examine any mail which has already passed through an exchange office. This contention is based on the theory that the "border search" exception to the Fourth Amendment prohibition against warrantless searches ceases to exist after mail passes through an exchange office.

This contention cannot be accepted. The Customs Service relies on 19 U.S.C. 1499 and *United States* v. *King*, 517 F.2d 350 (5th Cir. 1975), as authority for the proposition that Customs may examine mail after it has passed through an exchange office but has not been delivered to the addressee, at least when Customs did not inspect the mail previously. In the court case, envelopes had entered the United States at San Francisco and had been routed to Birmingham, Ala., without having been inspected. The court found Customs examination and opening of the envelopes in Birmingham, upon reasonable cause to suspect the presence of contraband, to be lawful. The court added that an individual's expectation of privacy in a mail article which enters the United States at San Francisco but is destined for Birmingham is no more offended by opening the envelope in Birmingham than in San Francisco.

DEFINITIONS ARE INADEQUATE

4. *Definitions.* Several comments were directed toward the fact that various terms such as "sealed", "letter mail", and "letter class mail" were either not defined or were used inconsistently in the proposed rule and policy statement.

In addition, it was noted that several definitions were qualified so as to be vague in the proposed Appendix.

These points are well taken. Section 145.1 has been amended to define three terms ("mail article", "letter class mail", and "sealed letter class mail"), and these terms exclusively have been used in the regulations. Furthermore, the definitions in the Appendix have been made clearer and more precise. For example, it is specifically stated that bulky envelopes and packages are included in the term "letter class mail" as long as the article is mailed at the letter rate or equivalent class or category of postage.

RECORD EACH MAIL OPENING

5. *Record should be made.* Several comments urged that a record of every opening of sealed letter class mail should be made, whether or not a seizure occurs. The comments suggested that the factors which present a reasonable cause to suspect the presence of merchandise or contraband should be recorded. Some comments proposed that the mail article itself be endorsed as opened by Customs, citing the reasonable cause, the examiner's name, and other relevant information.

These suggestions have merit and will be adopted in part. The Customs Service currently uses a stamp to endorse sealed letter class mail that has been opened. The stamp contains the mail examiner's identifying number and the place of opening. In the future, the mail article will be endorsed to also contain a code indicating the reason(s) why the mail article was opened. The examiner's number will be maintained because no useful purpose will be served by identifying the opener by name.

Customs also will make a record of each opening of sealed letter class mail, whether or not a seizure results, including the reasons for the opening.

"REASONABLE CAUSE TO SUSPECT"

6. *Examples are overly broad.* One comment contended that the examples given in paragraph B.7 of the proposed Appendix of "reasonable cause to suspect" the presence of merchandise or contraband are overly broad.

Another comment questioned whether Customs would remain rigid in adhering to the given examples if experience shows that their reliability is suspect.

Paragraph B.7 of the proposed Appendix indicated the following factors constituted reasonable cause: The sender of the mail article is a known mailer of merchandise or contraband, or the mail article contains writing or typing of a unique character which has previously been found on mail articles containing merchandise or contraband.

We agree that each of the named factors alone should not provide reasonable cause. These factors are therefore being transferred to the list of factors which, standing alone, do not provide reasonable cause to suspect the presence of merchandise or contraband.

COOPERATION WITH OTHER AGENCIES

7. *Referring mail articles to other agencies.* Many comments were received concerning paragraph F of the proposed policy statement, which set forth the conditions under which articles of mail may be turned over to other agencies for a controlled delivery or a follow-up investigation.

One comment asserted that there is no legal authority to turn over any mail article to any agency except the Postal Service without a search warrant if Customs has not seized the article. This assertion may apply to correspondence in sealed letter class mail, but clearly does not apply to all mail articles since 19 CFR 145.57 provides that certain goods, such as plants and plant products, food, drugs, cosmetics, and hazardous or caustic and corrosive substances, are subject to examination and clearance by appropriate agencies before release to the addressee. Paragraph F is therefore being revised to specify that mail articles which do not contain correspondence may be referred to other agencies without a warrant for examination and clearance in accordance with 19 CFR 145.57.

Another comment pointed out that only the Postal Service can effect a controlled delivery, and that the provision of paragraph F that mail may be turned over to the Drug Enforcement Administration (DEA) or other Federal agencies without a warrant to effect a controlled delivery therefore was erroneous. It was suggested that the provision be changed to provide that mail may be turned over to the Postal Service to effect a controlled delivery in cooperation with DEA or other Federal agencies. This suggestion is being adopted.

8. *Mail covers.* Postal Regulations provide for the use of "covers", or surveillance, of mail when certain facts, such as the commission of a crime, are suspected (see 39 CFR 233.2). Authorization for mail covers must be obtained from the Postal Service.

One comment suggested that the circumstances presented in paragraphs B.4 and 7 of the proposed Appendix, listing examples of "reasonable cause to suspect", call for mail covers rather than the opening of the mail article.

The example in subparagraph 7 has been deleted from the list and subparagraph 4 has been reworded to read, "Information from a source previously shown to be reliable indicates that an identifiable mail article contains merchandise or contraband." The Customs Service's authority, as outlined in the *Ramsey* case, to open and examine sealed letter class mail is independent of any other authority to engage in surveillance of mail. Inasmuch as the quoted example provides the necessary reasonable cause, there is authority apart from the mail cover procedure to open such mail. For this reason, this suggestion is not being adopted.

9. *Interagency agreements.* It was urged that Customs seek to standardize its cooperative agreements with other agencies concerning mail examination. Moreover, it was suggested that the agreements be treated as rules requiring public notice and opportunity for comment.

The Customs Service is attempting to standardize these agreements with other agencies to the fullest extent possible. It must be recognized, however, that some differences necessarily will occur because of different interests and procedures involved.

On the other hand, interagency agreements of this type are not rules requiring public notice and opportunity for comment within the meaning of 5 U.S.C. 551. In addition, any agreement would have to comport with both agencies' regulations and policies on the subject. For these reasons, the suggestion that public notice and opportunity for comment be given for interagency agreements on mail examination will not be adopted.

ARE MORE SAFEGUARDS NEEDED?

10. *Are time limits feasible?* Several comments requested that time limits be set for obtaining search warrants and for Customs processing of mail. Five days was suggested as a reasonable time for obtaining search warrants, while it was suggested that the time period for processing mail be based on the classes of mail examined.

Customs has experimented with setting a specific time limit for obtaining search warrants. In particular, Customs has required other agencies to obtain search warrants with regard to correspondence within 3 working days. This has proved to be too restrictive, especially for the military services. Customs intends to continue to study this matter, but at this time no specific time limit can be identified as satisfactory to all interests. It is for this reason that the term "promptly" has been used in the policy statement.

As to Customs processing of mail, the only delays which occur now are when a seizure or detention is made, when a search warrant is sought, or when the mail is referred to another inspectional agency, such as the Department of Agriculture. Other than in these cases, the mail is processed rapidly and promptly returned to postal channels. At least some of the above-mentioned delays obviously are not within Customs control. For that reason, and because most mail is processed rapidly in any event, a specific time limit is not believed to be feasible. Customs, however, will remain open to such a possibility should unnecessary delays or abuses be found.

11. *Reading correspondence.* Several suggestions urged Customs to emphasize the prohibition against reading correspondence without a search warrant. One suggestion was that the prohibition against reading correspondence in sealed letter class mail found to contain merchandise or contraband, or with a green label or Customs declaration, should be expressed in the regulations.

Section 145.3(c) unqualifiedly prohibits the reading of correspondence in any letter class mail without a search warrant or consent of the sender or addressee. This section clearly encompasses the situations where merchandise or contraband is found in the letter class mail or where a green label or Customs declaration is attached. The regulation, therefore, is considered to be sufficiently explicit in this regard. However, as a further safeguard, the explanatory material in the policy statement has been amended to refer specifically to these two situations.

Another suggestion was that Customs officers and employees should be reminded of the possibility of criminal penalties under 18 U.S.C. 1702 for obstructing correspondence. In response to this suggestion, the policy statement has been amended to remind Customs personnel that any violation of the regulations or policies regarding the examination of letter class mail will lead to administrative sanctions, as well as possible criminal prosecution under 18 U.S.C. 1702.

GENERAL

12. Customs received general recommendations that it remain flexible as to what constitutes reasonable cause, that it pursue the standardization of mail openings and the like, and that alternative privacy safeguards be considered.

The Customs Service is acutely aware of the sanctity of privacy in cor-

respondence. At the same time, Customs must perform its obligations to examine all importations, whether by mail or otherwise. The Customs Service feels that this document balances those interests in a satisfactory manner. Customs will, of course, remain flexible in regard to mail examinations, particularly to the extent that practice indicates the reliability, or lack thereof, of certain facts providing reasonable cause.

In sum, the Customs Service considers the safeguards provided in this document to be adequate to protect the right of privacy. If these safeguards do not in fact prove adequate, Customs will seek alternative measures to minimize the intrusiveness of mail examinations.

OTHER CHANGES

After review of the proposal and consideration of the comments submitted, it was decided that certain other changes to the proposal were needed. The notice proposed to amend only § 145.3 of the Customs Regulations. However, it became apparent that other sections would be affected by such an amendment. Therefore, §§ 145.0 through 145.3 have been amended as appropriate.

Part 145 referred throughout to the term "package" or its equivalent to mean, in effect, any mail article. Because packages can in fact be mailed at the letter rate, or equivalent class or category, this had caused confusion. These amendments therefore replace the term "package" or its equivalent with the term "mail article."

Proposed § 145.3 provided that warrants were required to read correspondence or to open letter class mail unless there was reasonable cause to suspect the presence of merchandise or contraband. That section has been changed to also allow such reading or opening when the sender or addressee gives written authorization to do so. Thus the interested party may be able to expedite the processing of mail by avoiding the delay associated with obtaining a search warrant.

The proposed policy statement has been amended to incorporate the interagency agreement requiring the presence of a Postal Service employee whenever sealed letter class mail is opened.

In addition to the above changes, a number of editorial and stylistic changes have been made to the text of the proposed amendment and policy statement.

DRAFTING INFORMATION

The principal authors of this document are Stuart P. Seidel, Office of the Chief Counsel, and Richard M. Belanger, Office of Regulations and Rulings, U.S. Customs Service. However, other personnel in the Customs Service and in the Department of the Treasury participated in its development.

AMENDMENTS TO THE REGULATIONS

Part 145 of the Customs Regulations (19 CFR Part 145) is amended in the following manner:

1. Section 145.0 is amended by adding the following as the first sentence in that section:

§ 145.0 Scope.

The provisions of this part apply only to mail subject to Customs examination as set forth in § 145.2.

* * * * *

2. Sections 145.1, 145.2, and 145.3 are amended to read as follows:

§ 145.1 Definitions.

(a) *Mail article.* "Mail article" means any posted parcel, packet, package, envelope, letter, aerogramme, box, card, or similar article or container, or any contents thereof, which is transmitted in mail subject to customs examination.

(b) *Letter class mail.* "Letter class mail" means any mail article, including packages, post cards, and aerogrammes, mailed at the letter rate or equivalent class or category of postage.

(c) *Sealed letter class mail.* "Sealed letter class mail" means letter class mail sealed against postal inspection by the sender.

§ 145.2 Mail subject to Customs examination.

(a) *Restrictions.* Customs examination of mail as provided in paragraph (b) is subject to the restrictions and safeguards relating to the opening of letter class mail set forth in § 145.3.

(b) *Generally.* All mail arriving from outside the Customs territory of the United States which is to be delivered within the Customs territory of the United States and all mail arriving from outside the U.S. Virgin Islands which is to be delivered within the U.S. Virgin Islands, is subject to Customs examination, except—

(1) Mail known or believed to contain only official documents addressed to officials of the U.S. Government;

(2) Mail addressed to Ambassadors and Ministers (Chiefs of Diplomatic Missions) of foreign countries; and

(3) Letter class mail known or believed to contain only correspondence or documents addressed to diplomatic missions, consular posts, or the officers thereof, or to international organizations designated by the President as public international organizations pursuant to the International Organizations Act (see § 148.87(b) of this chapter). Mail, other than letter class mail, addressed to the designated international organizations is subject to Customs examination except where the organization certifies under its official seal that the mail contains no dutiable or prohibited articles. Any Customs examination made shall, upon request of the addressee international organization, take place in the presence of an appropriate representative of that organization.

§ 145.3 Opening of letter class mail; reading of correspondence prohibited.

(a) *Matter in addition to correspondence.* Except as provided in paragraph (e), Customs officers and employees may open and examine sealed letter class mail subject to Customs examination which appears to contain matter in addition to, or other than, correspondence, provided they have reasonable cause to suspect the presence of merchandise or contraband.

(b) *Only correspondence.* No Customs officer or employee shall open sealed letter class mail which appears to contain only correspondence unless prior to the opening—

(1) A search warrant authorizing that action has been obtained from an appropriate judge of United States magistrate, or

(2) The sender or the addressee has given written authorization for the opening.

(c) *Reading of correspondence.* No Customs officer or employee shall read, or authorize or allow any other person to read, any correspondence contained in any letter class mail, whether or not sealed, unless prior to the reading—

(1) A search warrant authorizing that action has been obtained from an appropriate judge or United States magistrate, or

(2) The sender or the addressee has given written authorization for the reading.

(d) *Other types of correspondence.* The provisions of paragraph (c) shall also apply to correspondence between school children and correspondence of the blind which are authorized to be mailed at other than the letter rate of postage in international mail.

(e) *Certain Virgin Islands mail.* First class mail originating in the Customs territory of the United States and arriving in the U.S. Virgin Islands, which is to be delivered within the U.S. Virgin Islands, shall not be opened unless—

(1) A search warrant authorizing that action has been obtained from an appropriate judge or United States magistrate, or

(2) The sender or the addressee has been given written authorization for the opening.

§ 145.4 [Amended]

3. Section 145.4 is amended by substituting the term "mail article" for

the term "package from abroad" wherever it appears.

§ 145.40 [Amended]

4. Section 145.40(c) is amended by substituting the term "mail article" for the term "mail package" wherever it appears.

5. Part 145 is further amended by substituting the term "mail article" for the term "package" wherever it appears, and the term "mail articles" for the term "packages" wherever it appears.

(R.S. 251, as amended, R.S. 3061, secs. 498, 499, 581, 624, 46 Stat. 728, as amended, 747, as amended, 759 (19 U.S.C. 66, 482, 1498, 1499, 1581, 1624).)

6. The following policy statement is added at the end of Part 145.

POLICY STATEMENT

EXAMINATION OF SEALED LETTER CLASS MAIL

A. Customs officers and employees shall not open first class mail arriving in the U.S. Virgin Islands for delivery there, if it originated in the Customs territory of the United States, unless a search warrant or written authorization of the sender or addressee is obtained. Customs officers or employees may open and examine all other sealed letter class mail which is subject to the Customs mail regulations (see 19 CFR Part 145) and which appears to contain matter in addition to, or other than, correspondence, provided they have "reasonable cause to suspect" the presence of merchandise or contraband.

B. Customs officers and employees shall not open any sealed letter class mail which appears to contain only correspondence unless a search warrant or written authorization of the sender or addressee is obtained in advance of the opening.

C. Customs officers and employees are prohibited from reading, or authorizing or allowing others to read, any correspondence contained in any letter class mail unless there has been obtained in advance either a search warrant or written authorization of the sender or addressee. This prohibition, which will continue to be strictly enforced, also applies to correspondence between school children and correspondence of the blind which are authorized to be mailed at other than the letter rate of postage in international mail.

D. If a violation of law is discovered upon opening any mail article referred to in paragraph C, and it is believed that the correspondence may provide additional information concerning the violation and is therefore needed for further investigation or use in court, a search warrant shall be obtained before any correspondence is seized, read, or referred to another agency. Search warrants shall be promptly sought. Correspondence may be detained while a search warrant is being sought.

E. If no controlled delivery is arranged and correspondence is not to be otherwise seized pursuant to a search warrant (see "F" below), the item which constitutes the violation shall be removed and any correspondence shall be replaced in the wrapper, or in a new wrapper if the original wrapper has been seized pursuant to 19 U.S.C. 1595a. The wrapper shall then be resealed, marked to indicate it was opened by Customs, and returned to postal channels. Appropriate seizure notices shall be sent in accordance with 19 CFR 145.59(b).

F. No mail article may be referred to another agency without a search warrant unless—

(1) Any correspondence has been removed and the mail article is being referred for examination and clearance under 19 CFR 145.57,

(2) any correspondence has been removed and the mail article has been lawfully seized by Customs,

(3) The mail article is being referred to Postal Service channels to effect a controlled delivery in cooperation with other law enforcement agencies, or

(4) The mail article is being returned to Postal Service channels for normal processing.

G. Whenever sealed letter class mail is opened, the factors giving the Customs officer or employee "reasonable cause to suspect" the presence of merchandise or contraband shall be recorded on the appropriate form and on the opened envelope or other container by means of appropriate coded symbols. Should a seizure result, these factors shall also be recorded on the seizure report.

H. Sealed letter class mail with the green Customs label on a Customs declaration may be opened without additional cause. Correspondence in such mail is subject to the restrictions regarding the detention, reading, and referral of mail to other agencies found in paragraphs C through F.

I. Whenever any sealed letter class mail is opened for any of the reasons set forth in the above paragraphs, a Postal Service employee shall be present and shall observe the opening.

J. Any violation of the Customs mail regulations or any of these policies will lead to appropriate administrative sanctions, as well as possible criminal prosecution pursuant to 18 U.S.C. 1702.

APPENDIX

A. *Scope.* The Customs Service is authorized to examine, with certain exceptions for diplomatic and governmental mail, all mail arriving from outside the Customs territory of the United States (CTUS) which is to be delivered within the CTUS, and all mail arriving from outside the U.S. Virgin Islands which is to be delivered within the U.S. Virgin Islands. The term "Customs territory of the United States" is limited to the States, the District of Columbia, and Puerto Rico. Consequently, mail arriving from other U.S. territories and possessions is subject to Customs examination even though it is designated "domestic" mail for Postal Service purposes. Likewise, mail in the APO/FPO military postal system is subject to Customs examination, even though it also is designated "domestic" mail for Postal Service purposes. The Customs Service therefor is responsible for examining all international mail to be delivered in the CTUS and certain limited categories of so-called "domestic mail".

B. *Definitions.* Under various international conventions and bilateral agreements, international mail falls within two main classes, Parcel Post and Postal Union mail.

Parcel Post is not permitted to contain correspondence but is to be used for the transmission of merchandise and is fully subject to Customs examination in the same manner as other merchandise shipments (e.g., luggage, cargo, containers, etc.). Postal Union mail is divided into "LC" mail (Lettres et Cartes) and "AO" mail (Autres Objets).

"LC" mail consists of letters, packages paid at the letter rate of postage, post cards, and aerogrammes. The term "letter class mail" as used in the Customs Regulations and in this policy statement means "LC" mail as well as equivalent articles in "domestic" mail subject to Customs examination. Equivalent articles in "domestic" mail would include articles mailed at the letter rate, or equivalent class or category, in the APO/FPO military system or from a U.S. territory or possession outside the CTUS. Since the term "letter class mail" thus includes packages and bulky envelopes as long as they are mailed at the letter rate, or equivalent class or category, the restrictions relating to opening and reading of correspondence apply equally to such packages or bulky envelopes.

"AO" mail is to be treated in the same manner as Parcel Post mail since the Universal Postal Union Convention requires that they "be made up in such a manner that they may be easily examined" and generally are not permitted to "contain any document having the character of current and personal correspondence." Exceptions to the latter requirement exist for matter for the blind and certain correspondence between school children. Because of these exceptions, the prohibition against reading correspondence without a search warrant or authorization of the sender or addressee applies to correspondence of the blind and correspondence between school children contained in "AO" mail. "AO" mail can usually be identified by the following words: "Imprime" or "Printed Matter", "Cecogramme" or "Literature for the Blind", "Petit Paquet" or "Small Packet" or similar terms or their equivalents.

c. *Reasonable Cause to Suspect.* Determining whether there is "reasonable cause to suspect" that merchandise or contraband is contained in sealed letter class mail is ultimately a matter of judgment for each Customs official, based on all relevant facts and circumstances. This judgment should be exercised within the framework of the Customs regulation that sealed letter class mail which appears to contain only correspondence is not to be opened unless a search warrant or written authorization from either the sender or the addressee has been obtained in advance of the opening.

Past practice indicates that the following circumstances (which are illustrative and not exhaustive) provide "reasonable cause to suspect" and permit the opening of sealed letter class mail without a search warrant or authorization of the sender or addressee.

1. A detector dog has alerted to the presence of narcotics or explosives in a specific mail article.

2. X-ray or fluoroscope examination indicates the presence of merchandise or contraband.

3. The weight, shape, feel, or sound of the mail article or its contents may indicate that merchandise or contraband (e.g., a hard object which may be jewelry, a stack of paper which may be counterfeit money, or coins) could be in the mail article. Contents of a mail article which feel lumpy, powdery, or spongy may, for example, indicate the presence of narcotics.

4. Information from a source previously shown to be reliable indicates that an identifiable mail article contains merchandise or contraband.

5. The mail article is insured.

6. The mail article is a box, carton, or wrapper other than a thin envelope.

7. The sender or addressee of the mail article is known to be fictitious.

On the other hand, certain facts standing alone generally will not provide "reasonable cause to suspect" the presence of merchandise or contraband and therefore do not permit the opening of sealed letter class mail. For example, sealed letter class mail may not be opened merely because:

1. The mail article is registered.

2. The feel of a letter-size envelope suggests that it contains one or a limited number of photographs.

3. The mail article appears to be part of a mass mailing.

4. The mail article is from a particular country, whether or not a known source country of contraband.

5. A detector dog has alerted to the presence of narcotics or explosives somewhere within a tray of mail (the individual articles of mail must then be examined individually).

6. The sender or addressee of the mail article is known to have mailed or received contraband or merchandise in violation of law in the past.

7. The wrapper contains writing or typing similar to that previously found on articles of mail which contained contraband or merchandise in violation of law.

In cases where any one of the above facts is present, additional evidence must exist which in conjunction with that fact provides reasonable cause to suspect the presence of merchandise or contraband.

R. E. CHASEN,
Commissioner of Customs.

Approved: March 20, 1978.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[FR Doc. 78-9125 Filed 4-5-78; 8:45 am]

[1505-01]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 78-95]

PART 153—ANTIDUMPING

Disclosure Conferences

Correction

In FR Doc. 78-7648, appearing on page 11982 in the issue for Thursday, March 23, 1978, in § 153.31(d), in the sixth line, "cus-" should read "Cus-".

[4710-01]

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

SUBCHAPTER G—INTERNATIONAL EDUCATIONAL AND CULTURAL EXCHANGE

[Departmental Regulation 108.753]

PART 61—PAYMENTS TO AND ON BEHALF OF PARTICIPANTS IN THE INTERNATIONAL EDUCATIONAL AND CULTURAL EXCHANGE PROGRAM

Per Diem Allowances

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department's regulations governing International Educational and Cultural Exchange are revised to provide increased per diem allowances to foreign participants (International Visitors) who come to the United States observe, consult with colleagues, demonstrate special skills, or engage in specialized programs. The per diem allowance to foreign participants who come to the United States to lecture, teach, and engage in research is also increased. The increases are needed to meet the rising cost of housing, food, and other items.

EFFECTIVE DATE: March 31, 1978.

FOR FURTHER INFORMATION CONTACT:

John F. Madden, 202-632-3682.

SUPPLEMENTARY INFORMATION: The increases are needed to meet the rapidly rising costs of housing, food, and other items to certain categories of Department-sponsored grantees from overseas who participate in the International Educational and Cultural Exchange program. The current scale of maximum per diem rates for International Visitors is increased from $45 to $55 and $55 to $65. The current maximum per diem rate for those who come to lecture, teach, and engage in research is increased from $35 to $40.

Since this revision relates solely to per diem allowances for foreign participants in the Educational and Cultural Exchange Program of the Department of State, and the participants under the program will receive actual notice in each instance of the increased allowances to be received, notice of proposed rulemaking and delayed effective date under 5 U.S.C. 553 is not necessary. Accordingly, sections 61.3(c) and 61.4(c) of Title 22, Code of Federal Regulations are revised as set forth below.

1. In section 61.3, paragraph (c) is revised to read as follows:

§ 61.3 Grants to foreign participants to observe, consult, demonstrate special skills, or engage in specialized programs.

* * * * *

(c) *Per diem allowances.* Per diem allowance not to exceed $55 in lieu of subsistence expenses while participating in the program in the United States, its territories or possessions and while traveling within or between the United States, its territories or possessions: *Provided, however,* That, in accordance with standards and procedures prescribed from time to time by the Assistant Secretary of State for Educational and Cultural Affairs, a per diem allowance of not to exceed $65 may be established in the case of participants whose status and position require special treatment; *And provided further,* That the Assistant Secretary of State for Educational and Cultural Affairs may, in the case of any particular participant, authorize a per diem allowance in excess of $65. The participant shall be considered as remaining in a travel status during the entire period covered by his grant unless otherwise designated.

* * * * *

2. In § 61.4, paragraph (c) is revised to read as follows:

§ 61.4 Grants to foreign participants to lecture, teach, and engage in research.

* * * * *

(c) *Per diem allowance.* Per diem allowance not to exceed $40 in lieu of subsistence expenses while participating in the program in the United States, its territories or possessions and while traveling within or between the United States, its territories or possessions: *Provided, however,* That the Assistant Secretary of State for Educational and Cultural Affairs may, in the case of any particular participant, authorize a per diem allowance in excess of $40.

* * * * *

AUTHORITY: Sec. 4, 63 Stat. 111, as amended, 75 Stat. 527-538; 22 U.S.C. 2658, 2451 note.

For the Secretary of State.

Dated: March 23, 1978.

BEN H. READ,
Deputy Under Secretary for Management.

[FR Doc. 78-9155 Filed 4-5-78; 8:45 am]

[8230-01]

CHAPTER V—INTERNATIONAL COMMUNICATION AGENCY

PART 505—PRIVACY ACT POLICIES AND PROCEDURES

Editorial Amendment

AGENCY: International Communication Agency.

ACTION: Rule.

SUMMARY: This document makes an editorial amendment to remove certain existing Appendixes from the regulation.

EFFECTIVE DATE: April 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Jane S. Grymes, Management Analyst, Management Analysis/Regulations Staff, Associate Directorate for Management, International Communication Agency, Washington, D.C. 20547, 202-632-6813.

In 22 CFR Part 505 Appendix I and II are deleted.

JANE S. GRYMES,
Federal Register, Liaison Officer.

APRIL 4, 1978.

[FR Doc. 78-9310 Filed 4-5-78; 8:45 am]

[4210-01]

Title 24—Housing and Urban Development

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

[Docket No. R-78-470]

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

Fair Market Rents for New Construction and Substantial Rehabilitation; Vineland, N.J., and Susanville, Calif., Market Areas

AGENCY: Office of Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the Section 8 Fair Market Rents for the Vineland, N.J., market area and establishes rents for the first time for the Susanville, Calif., market area.

EFFECTIVE DATE: April 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Henry F. P. Cassagne, Chief Appraiser, Office of Technical Support, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, 202-472-4810.

SUPPLEMENTARY INFORMATION: Notice was given on October 19, 1977, at 42 FR 55826 that the Department of Housing and Urban Development (HUD) was proposing to amend Title 24 of the Code of Federal Regulations by revising Part 888, Schedule A, "Fair Market Rents for New Construction and Substantial Rehabilitation (including Housing Finance and Development Agencies Program)" for the Vineland, N.J., market area and by establishing for the first time Fair Market Rents for the Susanville, Calif., market area.

HUD has received no comments in response to the October 19, 1977, publication; therefore, the Fair Market Rents as proposed are adopted without change.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

Accordingly, Schedule A of Part 888 is revised as set forth below.

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with Executive Order 11821.

(Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d).)

Issued on March 29, 1978.

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

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

These Fair Market Rents have been trended ahead two years to allow time for processing and construction of proposed new construction and substantial rehabilitation rental projects.

NOTE.—The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2-Bedroom, multiplied by 1.05 rounded to the next higher whole dollar, (2) congregate housing dwelling units are the same as for non-congregate units and (3) single room occupancy dwelling units are those for 0-Bedroom units of the same type.

Insuring office—Sacramento, Calif., region IX—San Francisco

Market area	Structure type	Number of bedrooms				
		0	1	2	3	4 or more
Susanville	Detached			439	497	557
	Semidetached/row		302	360	418	478
	Walkup	207	276	346	414	475
	Elevator					

Area office—Camden, N.J., region II—New York

Market area	Structure type	Number of bedrooms				
		0	1	2	3	4 or more
Vineland	Detached			397	485	537
	Semidetached/row		327	375	442	493
	Walkup	254	278	337	412	460
	Elevator	295	340	414		

[FR Doc. 78-9053 Filed 4-5-78; 8:45 am]

[3710-08]

Title 32—National Defense

CHAPTER V—DEPARTMENT OF THE ARMY

[AR 15-6]

SUBCHAPTER A—AID OF CIVIL AUTHORITIES AND PUBLIC RELATIONS

PART 519—INVESTIGATIONS

Procedure for Investigating Officers and Boards of Officers

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This is a complete revision of Army Regulation 15-6. It provides authority for the appointment of and establishes procedures for investigations and boards of officers not specifically authorized by other directives. It may also be made applicable to or be used as a guide for other investigations and boards. This regulation provides for informal as well as formal proceedings. It authorizes designation of respondents and provides procedural safeguards for them.

EFFECTIVE DATE: October 31, 1977.

FOR FURTHER INFORMATION CONTACT:

Colonel Darrell L. Peck, Chief, Administrative Law Division, Office of The Judge Advocate General, Headquarters, Department of the Army, Washington D.C. 20310, 202-695-3585.

Dated: March 29, 1978.

DARRELL L. PECK,
Colonel, JAGC, Chief,
Administrative Law Division.

In consideration of the foregoing, 32 CFR is amended by revising Part 519 as follows:

Sec.

519.1 General.
519.2 Appointing authority responsibilities.
519.3 General guidance for investigating officers and boards.
519.4 Informal investigations and boards of officers.
519.5 Formal boards of officers.
Appendix A—Sample letters of appointment.
Appendix B—Suggested procedure for boards of officers with respondents.
Appendix C—Guidance for preparing Privacy Act statements.

AUTHORITY: The provisions of this Part 519 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012.

519.1 General.

(a) *Applicability.*—(1) *General.* This part provides authority for the appointment of and establishes procedures for investigations and boards of officers not specifically authorized by any other directive (such as the Uniform Code of Military Justice or other statute, the Manual for Courts-Martial 1969 (Rev.) (E.O. 11476, June 19, 1969, as amended by E.O. 11835, Jan. 27, 1975), an Executive order, a Department of Defense directive, or an Army, command, or post regulation). This part, or any portion of it, may be made applicable to investigations or boards which are authorized by another directive, but only by a specific provision in that directive or in the letter of appointment. In case of a conflict between the provisions of this part, when made applicable, and the provisions of the specific directive authorizing the investigation or board, the latter will govern. Even when not specifically made applicable, this part may be used as a general guide for investigations or boards authorized by another directive, but in that case its provisions are not mandatory.

(2) *Reserve Components.* This part is applicable to the U.S. Army Reserve. It applies to the Army National Guard only to the extent specifically made applicable by National Guard regulations.

(3) *Gender.* Masculine gender pronouns used in this part are intended to include both male and female personnel.

(b) *Types of investigations and boards.*—(1) *General.* An administrative factfinding procedure under this part may be designated an investigation or a board of officers. The proceedings may be informal (§ 519.4) or formal (§ 519.5). An investigation is conducted by a single investigating officer using informal procedures. A single fact-finder is designated a board if formal procedures are to be used. A board of officers is used when more than one fact-finder is appointed, whether formal or informal procedures are to be used.

(2) *Selection of procedure.* In determining whether informal or formal procedures will be used, the appointing authority should consider the purpose of the inquiry, the seriousness of the subject matter, the complexity of issues involved, the need for documentation, and other such factors. The desirability of providing a comprehensive hearing for persons whose conduct or performance of duty is being inquired into should also be considered (see § 519.1(d), § 519.4(c), and § 519.5(d)(1)), since only formal procedures are designed to do that. Formal procedures are required only when expressly made applicable, either by the specific directive authorizing the board or by a letter of appointment. In all other cases in which this part applies, informal procedures will be used. In determining which procedures to use, the appointing authority is encouraged to seek the advice of the servicing judge advocate.

(3) *Preliminary investigations.* Even in serious or complex cases, it may be advisable to direct immediately an informal investigation to ascertain the magnitude of the problem, to identify and interview witnesses, and to summarize or record their statements. The informal investigation may then be terminated and, if a formal board is then appointed, the results of the preliminary investigation may be used to facilitate its work.

(c) *Function of investigations and boards.*—(1) *Primary.* The primary function of any investigation or board of officers is to ascertain facts and to report them to the appointing authority to assist him in carrying out his official responsibilities. It is the duty of the investigating officer or board to ascertain and consider the evidence on all sides of each issue, thoroughly and impartially, and to make such findings and recommendations as may be appropriate and warranted by the facts and by the purpose of the investigation or board.

(2) *Additional.* A formal board may have the additional function of affording a hearing to a person against whom an adverse finding may be made or an adverse action recommended as a result of the proceeding.

(d) *Interested persons.* A person who has a direct interest in the proceedings (e.g., against whom an adverse finding may be made or an adverse action recommended) may be designated a respondent (see § 519.5(d)). On the other hand, the fact that a person has a direct interest does not require that the proceedings constitute a hearing for him, provided the primary purpose of the board is not to determine whether some adverse action should be taken against him. An appointing authority has a legitimate right to use investigations and boards for their primary function, to obtain information necessary or useful in carrying out his official responsibilities, notwithstanding the fact that the information so obtained may reflect adversely on an individual. However, before information gathered by an investigation or board may be used as the basis for an adverse personnel action (other than action under the Uniform Code of Military Justice, civilian personnel regulations, AR 600-37, or any other directive which contains its own procedural safeguards) against a person who was not a respondent, the authority who intends to take the adverse action must first notify the person affected of the proposed action and provide him a copy of that part of the findings and recommendations of the investigation or board, and the supporting evidence, on which the proposed action is based. This notice will be in writing. The person affected will be given a reasonable opportunity to reply in writing and to submit relevant

material. His reply will be given due consideration in making the final decision as to what action should be taken.

§ 519.2 Appointing authority responsibilities.

(a) *Appointment.*—(1) *Authority to appoint.* An informal investigation or board (§ 519.4) may be appointed by a commander at any level, or by a principal staff officer of a general court-martial convening authority, to inquire into matters within his area of responsibility. A formal board (§ 519.5) to inquire into matters within his area of responsibility may be appointed by any general or special court-martial convening authority, or by a principal staff officer of a major Army commander (AR 10-5), or at Headquarters, Department of the Army. If the appointing authority is a general court-martial convening authority, the selection of members of a board may be delegated to an impartial member of his staff. When more then one appointing authority has an interest in the matter requiring investigation, a single investigation or board should be conducted whenever practicable. In case of doubt or disagreement as to who should appoint the investigation or board, the first common superior of all organizations concerned will resolve the issue. An appointing authority may request, through channels, that personnel from outside his organization be made available to serve on a board or conduct an investigation under his jurisdiction.

(2) *Method of appointment.* Informal investigations and boards may be appointed orally or in writing. Formal investigations and boards will be appointed in writing but, when necessary, may be appointed orally and later confirmed in writing. Any written appointment will be in the form of a letter of appointment (App A). Whether oral or written, the appointment should specify clearly the purpose and scope of the investigation or board and the nature of the findings and recommendations required. If the appointment is made under a specific directive, that directive should be cited. If the procedures of this part are intended to apply, the appointment should cite this part and, in the case of a board, specify whether it is to be informal (§ 519.4) or formal (§ 519.5). Special instructions (e.g., requirement for verbatim record) should be included, when appropriate.

(3) *Who may be appointed.* Except as provided in § 519.5(a)(5) only commissioned officers will be appointed as investigating officers or voting members of boards of officers, unless the specific directive under which the appointment is made provides otherwise. Recorders, legal advisors, and persons with special technical knowledge may be appointed to formal boards of officers (§ 519.5(a)). An investigating officer or voting member of a board appointed to examine a service member's conduct or performance of duty, or to make findings or recommendations which may be substantially adverse to a service member, will be senior in rank to that member, except where the appointing authority determines that it is impracticable because of military exigencies (but not because of mere inconvenience). If an investigating officer or voting member of a board discovers during the course of the proceedings that the completion thereof requires examining the conduct or performance of duty of, or may result in findings or recommendations substantially adverse to, a person senior to him, he will report this fact to the appointing authority. The appointing authority will excuse him, replace him with an officer senior to the person affected, or appoint another officer, senior to the person affected, to conduct a separate inquiry into the matters pertaining to that person. If the appointing authority determines that military exigencies make these alternatives impracticable, he may direct the investigating officer or voting member to continue as such. In a formal proceeding, this determination will be in writing and made an enclosure to the report of proceedings.

(b) *Administrative support.* The appointing authority will arrange necessary facilities, clerical assistance, and other administrative support for investigating officers and boards of officers. If not required by another directive, a verbatim transcript of the proceedings may be authorized only by a general court-martial convening authority after consultation with his staff judge advocate. A contract reporter may be employed only for a formal board and only if authorized by the specific directive under which the board is appointed. In no event will a contract reporter be employed if a military or Department of the Army civilian employee reporter is reasonably available. The availability of a military or Department of the Army civilian employee reporter will be determined by the servicing judge advocate. (That judge advocate is responsible to provide or arrange for the reporter, if determined to be available.)

(c) *Action of the appointing authority.*—(1) *Basis of decision.* Unless otherwise provided by another directive, the appointing authority is not bound by the findings or recommendations of an investigation or board. He may consider any relevant information in making a decision, even though that information was not considered at the investigation or board. If additional information is to be considered, however, any respondent who may be affected adversely by that information will be so advised in writing; he will be given an opportunity to reply in writing and to submit relevant material; and his reply will be considered along with the additional information.

(2) *Legal review.* Other directives which authorize investigations or boards may require the appointing authority to refer the report of proceedings to the servicing judge advocate for legal review, and the appointing authority should do so in other cases involving serious or complex matters. The judge advocate's review will determine whether legal requirements have been complied with, the effect of any error (including whether any error has a material adverse effect on any individual's substantial rights), whether the findings of the investigation or board, or those substituted or added by the appointing authority, are supported by substantial evidence or lack of it (see § 519.3(j)(2)), and whether the recommendations are supported by the findings.

(3) *Effect of errors.* Procedural errors or irregulatities in an investigation or board normally do not invalidate the proceeding or any action of the appointing authority based on it.

(i) *Harmless errors.* If the appointing authority notes a harmless defect in the proceeding he may take his final action notwithstanding the defect.

(ii) *Minor errors requiring correction.* If the investigating officer of board has failed to make a finding or recommendation required by the letter of appointment or a specific directive, or if there has been a minor procedural error or omission which may be corrected without prejudice to a respondent, the appointing authority may return the case to the same investigating officer of board for corrective action.

(iii) *Substantial errors.* In case of a jurisdictional error (e.g., failure to meet essential requirements with regard to appointment or composition) or an error which has a material adverse effect on an individual's substantial rights, the appointing authority may not use the affected part of that investigation or board as the basis for adverse action against the person whose substantial rights were prejudiced. (Use of *evidence* considered by the investigation or board is not precluded in connection with action under the Uniform Code of Military Justice, civilian personnel regulations, AR 600-37, or any other directive which contains its own procedural safeguards.) If the error can be corrected without prejudice to a respondent, the appointing authority may do so, returning the case to the same investigating officer or board for corrective action, if necessary. In case of an error which cannot be corrected otherwise, the appointing authority may set aside the findings and recommendations and refer the case to a new inves-

tigating officer or board composed entirely of new voting members. The new investigating officer or board may be furnished any evidence properly considered by the previous investigating officer or board. Additional evidence also may be considered by the new investigating officer or board. If the specific directive under which a board is appointed provides that the appointing authority may not take less favorable action with regard to a respondent than the board recommends, the appointing authority's action is limited by the original recommendations even though the case subsequently is referred to a new board which recommends less favorable action.

§ 519.3 General guidance for investigating officers and boards.

CONDUCT OF THE INVESTIGATION

(a) *Oaths.*—(1) *Requirement.* Unless required by the specific directive under which appointed, it is not necessary for an investigating officer or board member to be sworn. Reporters and interpreters, when used, should be sworn. Witnesses appearing before a formal board should be sworn; witnesses may be sworn, at the discretion of the investigating officer or president, for an informal investigation or board. The letter of appointment may require the swearing of witnesses or board members.

(2) *Administering oaths.* An investigating officer, recorder (or assistant recorder), or member of a board of officers is authorized to administer oaths in the performance of such duties (see Article 136, UCMJ). The form of oaths may be found in appendix B.

(b) *Challenges.* Neither an investigating officer nor any member of a board is subject to challenge, peremptorily or for cause, except as provided in § 519.5(g). However, any person who is aware of facts indicating a lack of impartiality or other necessary qualification on the part of an investigating officer or board member should bring that information to the attention of the appointing authority.

(c) *Counsel.* A respondent has a right to be represented by counsel (§ 519.5(f)). No one else is entitled to appearance of and representation by counsel in connection with an investigation or board. However, any person may obtain counsel at no expense to the Government and may consult that counsel with regard to the proceedings. Such counsel may attend sessions of the investigation or board which are open to other members of the public but may not participate in the proceedings. The proceedings will not be interrupted unduly to allow the person to consult with counsel.

(d) *Decisions.* The findings and recommendations of a board composed of more than one member are arrived at as provided in this section. Challenges by a respondent are decided as provided in § 519.5(g). Administrative matters (e.g., time of sessions, uniform, recess) are decided by the investigating officer or president. Evidentiary and procedural matters (e.g., motions, acceptance of evidence, continuances) are decided by the legal advisor or, if none, by the investigating officer or president. Decisions by the legal advisor are final. Any voting member may object to the president's decision on an evidentiary or procedural matter. If there is an objection, a vote will be taken in closed session, and the president's decision is reversed if a majority of the voting members present so vote.

(e) *Presence of the public and the news media.*—(1) *The public.* Proceedings of an investigation or board are normally open to the public only if there is a respondent. However, if a question arises, the determination should be made on the basis of the circumstances of each case. It may be appropriate to open proceedings to the public, even when there is no respondent, if the subject matter is of substantial public interest. It may be appropriate to exclude the public from at least some portions of the proceedings, even though there is a respondent, if the subject matter is classified, inflammatory, or otherwise exceptionally sensitive. In any case, the appointing authority may specify whether the proceedings will be open or closed. If he/she does not specify, the decision is within the discretion of the investigating officer or the president of the board. If there is a respondent, the servicing judge advocate or the legal advisor, if any, should be consulted prior to a decision to exclude the public from any portion of the proceedings.

(2) *The news media.* Any proceedings of an investigation or board which are open to the public will also be open to representatives of the news media. Recording, photographing, broadcasting, or televising during the proceedings, whether by news media or by other members of the public, is prohibited.

(f) *Proof of facts.*—(1) *General.* Facts and circumstances relevant to the matter under investigation are most often proved or disproved, either directly or through inferences, by: Real (tangible) evidence; documentary evidence; testimony or statements of witnesses; and matters of which official notice may be taken without proof.

(2) *Real evidence.* A tangible object (e.g., weapon, clothing, fingerprint) which is material and relevant to the subject of the inquiry is real evidence. Whenever an item of real evidence would aid in establishing the existence or nonexistence of a fact, that item, or a photograph, description, or other suitable reproduction of it (see § 519.3(p)(2)), should be included in the report of proceedings, together with any statements of witnesses necessary to identify the item and verify the accuracy of the reproduction. If the physical layout of a building, room, or other place is relevant, the investigating officer or board members (together with the recorder, legal advisor, respondent, or counsel, if any) may visit the scene, if practicable; in any event, a diagram should be included in the report. Investigating officers or board members should not overlook the value of their own observations respecting real evidence. If an investigating officer or board member observes an item and gains impressions not adequately portrayed by a photograph, chart, or other representation, he (or the recorder acting at his request) should ensure that an appropriate description of the item is made and included in the report.

(3) *Documentary evidence.* Documentary evidence consists of records, reports, letters, and other written, printed, or graphic materials which indicate the existence or nonexistence of a fact. Investigating officers and boards should be alert to discover all such evidence relevant to the matter under inquiry and to include the originals or copies in the report (see § 519.3(p)(3)).

(4) *Testimony or statements of witnesses.* Oral or written accounts of matters within the personal knowledge of individuals usually constitute an indispensable part of the evidence considered in an investigation or board. Because, unlike real or documentary evidence, such evidence is not fixed as to form or substance, obtaining a witness' testimony or statement requires careful advance analysis of relevant matters of which the witness is expected to have knowledge and preparation of questions to elicit that knowledge without distorting its substance. A preliminary interview of the witness to clarify what information can be elicited is often appropriate, especially by the recorder and respondent, or respondent's counsel, in formal proceedings. Voting members, however, may not conduct separate interviews of witnesses in proceedings with respondents. Also see § 519.3(h).

(5) *Official notice.* Some facts are of such common knowledge that there is not need to obtain specific evidence to prove them (e.g., general facts and laws of nature; general facts of history; location of major elements of the Army; organization of the Department of Defense and its components). This includes, but is not limited to, those matters of which judicial notice may be taken (see para 147, MCM 1969 (Rev.)).

(g) *Rules of evidence.*—(1) *General.* Proceedings utilizing this regulation are administrative and not judicial in

nature; therefore, an investigating officer is not bound by the rules of evidence prescribed for trials by courts-martial or for court proceedings generally. Accordingly, subject only to the provisions of paragraph (e)(3) of this section, anything which in the minds of reasonable persons is relevant and material to an issue may be accepted as evidence. All evidence will be given such weight as is warranted under the circumstances. (See § 519.3(d) as to who decides whether offered evidence will be accepted.)

(2) *Best evidence.* An investigation or board is not precluded from considering any evidence merely because there may be better evidence available to prove the same fact. Generally, however, an effort should be made to obtain the best evidence reasonably available, considering factors such as time, importance, and expense as well as the availability and reliability of secondary (substitute) evidence. Although hearsay evidence may always be accepted, the personal statement or testimony of a witness is usually better evidence than an earlier written statement by that witness or having someone else state what the witness said. Therefore, a witness normally should be interviewed by or called before the investigating officer or board unless he is not reasonably available (e.g., cannot be located; cannot be ordered to appear and refuses to do so; the importance of his testimony or personal appearance is disproportionate to the delay, expense, or difficulty in obtaining it). Similarly, the original or duplicate original (see para 143a(1), MCM 1969 (Rev.)) of a document or writing is better evidence than a copy. A copy may be accepted if the original is not readily obtainable, but the investigating officer or board should then take reasonable precautions to verify the reliability of the copy (e.g., by certificate of the custodian of official records; statement of a witness who has seen both the original and the copy; comparison of the copy and the original by the investigating officer or recorder).

(3) *Limitations.* Administrative proceedings governed by this part generally are not subject to exclusionary rules precluding the use of relevant evidence. However, the following limitations do apply with regard to evidence which may be accepted and considered in an investigation or board proceeding governed by this part.

(i) *Privileged communications.* The rules in paragraph 151, Manual for Courts-Martial, United States, 1969 (Revised edition), concerning privileged communications between client-attorney and penitent-clergyman apply to investigations and boards.

(ii) *Polygraph tests.* No evidence of the results, taking, or refusal of a polygraph (lie detector) test will be received or considered by an investigating officer or board of officers without the consent of the person involved in such test and, in a formal board proceeding with a respondent, the agreement of the recorder and any respondent affected.

(iii) *"Off the record" statements.* Findings and recommendations of the investigating officer or board must be supported by evidence contained in the report. Accordingly, witnesses should not be allowed to make statements "off the record" to board members in formal proceedings. Even in informal proceedings, such statements should not be considered for their substance, but only to the extent they are helpful in locating additional evidence.

(iv) *Statements regarding disease or injury.* A member of the Armed Forces may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has suffered (10 U.S.C. 1219). No such statement against the member's interest may be considered in an investigation or board proceeding unless the member, prior to being asked to sign the statement, was advised of his right not to sign it. Nor in the course of an investigation or board will the member's oral statement relating to the origin, incurrence, or aggravation of a disease or injury that he has suffered be taken and reduced to writing, unless the above advice is given first.

(v) *Self-incrimination.* (A) No military witness or respondent will be compelled to incriminate himself or to answer any question the answer to which might tend to incriminate him, or to make a statement or produce evidence if the statement or evidence is not material to the issue and might tend to degrade him (see Article 31, UCMJ). No witness or respondent not subject to the Uniform Code of Military Justice will be required to make a statement or produce evidence which would deprive him of his rights under the Fifth Amendment of the United States Constitution. However, the person must state specifically that his refusal to answer a question is based on the protection afforded by Article 31 or the Fifth Amendment. The investigating officer or board will decide whether the reason for refusal is well taken and, if not, the witness may be ordered to answer. Whenever it appears appropriate and advisable to do so, the rights of a witness or respondent should be explained to him, using the procedure set forth on DA Form 3881.

(B) The right to invoke Article 31 or the Fifth Amendment is personal to the individual. No one else may assert the right for him, and he may not assert it to protect anyone other than himself. An answer tends to incriminate a person if it would make it appear that he is guilty of a crime.

(C) Except as provided above, a person may be required to testify or make a statement at a proceeding in which he has been designated a respondent. This authority should be used sparingly, however; it normally should be invoked only when certain material evidence or facts are not reasonably available from any source other than the respondent (e.g., the respondent had exclusive possession or control of funds, property, or other evidence; the respondent is an essential witness concerning the conduct of another).

(D) In appropriate cases a witness or respondent may be provided a grant of testimonial immunity by appropriate authority and required to testify notwithstanding Article 31 or the Fifth Amendment. The servicing judge advocate should be consulted for additional guidance.

(vi) *Involuntary admissions.* A responent's confession or admission, obtained by unlawful coercion or inducement likely to affect its truthfulness, will not be accepted as evidence against that respondent. The fact that a respondent was not advised of his rights under Article 31, Uniform Code of Military Justice, or the Fifth Amendment of the United States Constitution, or of his right to a lawyer, before a confession or admission was made does not, of itself, prevent acceptance of the confession or admission as evidence.

(vii) *Bad faith unlawful searches.* If a member of the Armed Forces, acting in an official capacity (e.g., military policeman, commander), conducted or directed a search which he knew was unlawful under the Fourth Amendment, United States Constitution, as applied to the military community, evidence obtained as a result of that search may not be accepted or considered against any respondent whose rights were violated by the search. In all other cases, evidence obtained as a result of any search or inspection may be accepted.

(h) Witnesses. (1) *General.* Investigating officers and boards generally do not have authority to subpoena witnesses to appear and testify. However, military personnel and Federal civilian employees may be ordered to do so by an appropriate commander or supervisor. Other civilians who agree to appear may be issued invitational travel orders in certain cases (see para C6000.11, JTR). A witness normally should be informed of the nature of the investigation or board before his statement or testimony is taken. The investigating officer or board president (assisted by the recorder and legal advisor, if any) should protect every witness from improper questions, harsh or insulting treatment, and unnecessary inquiry into his private affairs. See § 519.3(a) as to placing witnesses under oath.

(2) *Attendance as spectators.* Witnesses other than a respondent normally should not be present at the investigation or board proceedings except when they are testifying. In some cases, however, it is necessary to allow an expert witness to hear evidence presented by other witnesses in order that he may be sufficiently advised of the facts to give informed testimony as to the technical aspects of the case. In such instances, the report of proceedings should affirmatively show that the witness was present during the testimony of other witnesses.

(3) *Taking testimony or statements.* If a board is formal, or if the appointing authority has directed a verbatim record (see § 519.2(b)) witnesses' statements should be elicited by questions and answers. In all other cases statements of witnesses may be obtained at informal sessions in which the witness relates his knowledge and it is then summarized on DA Form 2823 (statement). A tape recorder may be used at such sessions to facilitate later preparation of written statements, but the witness should be informed if one is to be used. The investigating officer or board should assist the witness in preparing a written statement to avoid inclusion of irrelevant material or the omission of important facts and circumstance which are within the knowledge of the witness. However, care must be taken to ensure that the statement is phrased in the words of the witness. The interviewer must scrupulously avoid coaching the witness or suggesting the existence or nonexistence of material facts. The witness may be asked to read the final statement, make appropriate corrections, and sign it. If the witness is unavailable or refuses to sign, the person who took the statement will note, over his own signature, the reasons the witness has not signed the statement and certify that the statement is an accurate summary of what the witness said. Whether the proceeding is formal or informal, to conserve time and resources, a witness may be asked to confirm a prior written statement (which will first be made an exhibit), but he is subject to questioning on the substance of such statement.

(4) *Discussion of evidence given.* An investigating officer or board may direct military and civilian witnesses who are subject to Army authority, and request other witnesses, not to discuss their statement or testimony with other witnesses, or with persons who have no official interest in the proceedings, until the investigation is completed. This is appropriate to eliminate the possibility that disclosures of the substance of the statement or testimony may influence the testimony of witnesses still to be heard. Witnesses will not be precluded from discussing any relevant matters with the recorder, a respondent, or counsel for a respondent.

(5) *Privacy Act Statements.*—(i) *When required.* A Privacy Act Statement (§ 505.4 of this chapter) will be provided to a witness if the report of proceedings will be filed in a system of records from which it can be retrieved by reference to the name or other personal identifier of that witness. Unless otherwise informed by the appointing authority, an investigating officer or board may presume that the report of proceedings will be retrievable by the name of each person who has been designated a respondent, but that the report will not be retrievable by the name of any other witness. If any question arises with regard to the necessity for a Privacy Act Statement, the investigating officer or board should consult the servicing judge advocate.

(ii) *Method of providing Statement.* Appendix C provides guidance for preparing Privacy Act Statements. The Statement may be written or oral, but it must be provided prior to taking the witness' testimony or statement. If provided in writing, the Statement will be attached to the report of proceedings as an inclosure. If provided orally, it will be included in the report either as part of a verbatim transcript or, as an inclosure, in the form of a certificate by the officer who provided the Privacy Act Statement.

(iii) *Copy for the witness.* The witness is entitled to be provided a copy of the Privacy Act Statement in a form suitable for retention. Providing a respondent a copy of the report of proceedings (§ 519.5(j)(2)) which includes the Statement satisfies this requirement. Any other witness who is provided a Privacy Act Statement will, on request, be furnished a copy of the Statement in a form suitable for retention.

(i) *Communications with the appointing authority.* If in the course of the investigation or board it appears there are circumstances which may cause the appointing authority to consider enlarging, restricting, or terminating the proceedings, altering the composition of the fact-finding body (by augmentation or substitution), or canceling or otherwise modifying any instruction in the original appointment, the investigating officer or president of the board should report this to the appointing authority with recommendations.

Findings and Recommendations

(j) *Findings*—(1) *General.* A finding is a clear and concise statement of a fact directly established by evidence in the record, or is a conclusion of fact by the investigating officer or board which can be readily deduced from evidence in the record. Negative findings (e.g., that the evidence does not establish a fact) are permissible and often appropriate. The number and nature of the findings required depend on the purpose of the investigation or board and on the instructions of the appointing authority. The investigating officer or board should not exceed the scope of findings indicated by the appointing authority (§ 519.3(i)). The findings should relate to and must be sufficient to support each recommendation made.

(2) *Standard of proof.* Unless another directive or an instruction of the appointing authority establishes a different standard, the findings of investigations and boards governed by this part must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence must establish a degree of certainty upon which a reasonable person is convinced of the truth or falseness of a fact, taking into consideration all the facts presented and all reasonable inferences, deductions, and conclusions drawn from them, and considering these elements in their entirety and in relation to each other. The weight of the evidence is not determined by the number of witnesses or volume of exhibits, but by considering all the evidence, evaluating such factors as the witness' demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity.

(3) *Form.* Findings should be stated to reflect clearly the relevant facts established by the evidence and the conclusions thereon of the investigating officer or board. If findings are required on only one subject, normally they should be stated in chronological order. If findings on several distinct aspects are necessary, they ordinarily should be stated separately as to each such aspect but chronologically within each one. If the investigation or board is authorized by a directive which establishes specific requirements as to findings, those requirements must be complied with.

(k) *Recommendations.* The nature and extent of recommendations required also depend on the purpose of the investigation or board and on the instructions of the appointing authority. Each recommendation, even a negative one (e.g., that no further action be taken), must be supported by the findings. Investigating officers and boards should make their recommendations according to their understanding of the rules, regulations, policies, and customs of the service, guided by their concept of justice both to the Government and to individuals.

(l) *Deliberation.* After all the evidence has been received (and arguments heard, if there is a respondent), the investigating officer or board

members should consider it carefully and in light of the instructions contained in the original appointment and any supplemental instructions. These deliberations should (and if there is a respondent, must) be in closed session, that is, with only voting members present. Nonvoting members of the board do not participate in the board's deliberations but may be consulted as desired. If there is a respondent, he and his counsel, if any, should be present during such consultation. At the board's request, the legal advisor, if any, may assist in putting the findings and recommendations in proper form after their substance has been adopted by the board. A respondent or counsel is not entitled to be present during such assistance.

(m) *Voting.* A board composed of more than one officer arrives at its findings and recommendations by voting. All voting members present must vote. After thoroughly considering and discussing all the evidence, the board should propose and vote on findings of fact. The board should next propose and vote on recommendations. If it becomes apparent that additional findings are necessary to support a proposed recommendation, the board should vote on such findings before voting on the related recommendation. In all cases, a majority vote of the voting members present determines questions before the board. In case of a tie vote, the proposal for which the president voted is the determination of the board. If any member does not agree with the findings or recommendations of the board, he may include a minority report in the report of proceedings (DA Form 1574), stating explicitly what part of the majority report he disagrees with and his reasons. The minority report may include its own findings or recommendations.

REPORT OF PROCEEDINGS

(n) *Form.* If a verbatim record of the proceedings was directed, the transcript of those proceedings, with a completed DA Form 1574 as an inclosure, and other inclosures and exhibits, will constitute the report of proceedings. DA Form 1574 alone, with inclosures and exhibits, will constitute the report in all other cases. Every report should include findings and, unless the instructions of the appointing authority indicate otherwise, recommendations.

(o) *Inclosures.* All significant letters and other papers relating to administrative aspects of the investigation or board, and which are not evidence, should be numbered consecutively with Roman numerals and made inclosures. This includes such items as:

—The letter of appointment or, if the appointment was oral, a summary by the investigating officer or board including the date of appointment, identification of the appointing authority and of all persons appointed, purpose of the investigation or board, and any special instructions;

—Copies of the notice to any respondent (see § 519.5(e));

—Copies of other correspondence with any respondent or counsel;

—Written communications to or from the appointing authority (see § 519.3(i));

—Privacy Act Statements (see § 519.3(h)(5));

—Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered.

(p) *Exhibits*—(1) *General.* Every item of evidence offered to or received by the investigation or board should be marked as a separate exhibit. Unless a verbatim record was directed, statements or transcripts of testimony by witnesses should also be exhibits. Exhibits should be numbered consecutively as offered as evidence (even if not accepted), except that those submitted by each respondent should be lettered consecutively (and further identified by the name of the respondent, if more than one). Exhibits submitted but not received in evidence should be marked "Not received."

(2) *Real evidence.* Usually it is impracticable to attach real evidence (physical objects) to the report. A clear and accurate description (e.g., written statement) or depiction (e.g., photograph), authenticated by the investigating officer, recorder, or president, may be substituted in the report for such exhibits. If that is done, the real evidence itself should be preserved for use in the event further proceedings are necessary, and its location should be indicated in the exhibit substituted in the report. When final action has been taken in the case, the evidence should be disposed of as provided in AR 190-22.

(3) *Documentary evidence.* When the original of an official record or other document which must be returned has been received as an exhibit, an accurate copy, authenticated by the investigating officer, recorder, or president, may be substituted for submission with the report. The location of the original should be indicated in the exhibit substituted in the report.

(4) *Official notice.* Matters of which the investigating officer or board took official notice (§ 519.3(f)(1)) normally need not be recorded in an exhibit. However, if official notice is taken of a matter over the objection of a respondent or his counsel, that fact will be noted in the report of proceedings and the investigating officer or board will include as an exhibit a statement of the matter of which official notice was taken.

(q) *Authentication.* Unless otherwise directed, the report of proceedings should be authenticated by the signature on the DA Form 1574 of the investigating officer or of all voting members of the board and the recorder. Board members submitting a minority report (see § 519.3(m)) may authenticate that report, rather than the majority report. If any voting member of the board or the recorder refuses or is unable to authenticate the report when completed (e.g., because of death, disability, or absence), the reason will be stated in the report where that authentication would otherwise appear. Further attempts at authentication by such members are unnecessary.

(r) *Safeguarding the report.* When the material it contains requires protection pending action by the appointing authority but does not have a security classification, the report of proceedings should be marked "For Official Use Only" (see AR 340-16) with the cancellation statement—

Protective marking is cancelled upon final action by the appointing authority on this report, or at such later date as he directs.

Pending final action by the appointing authority, no one will disclose, release, or cause to be published any part of the report of proceedings, except as required in the normal course of forwarding and staffing it or as otherwise authorized by law or regulation, without the prior approval of the appointing authority.

(s) *Submission.* The report of proceedings should be submitted, in two complete copies, directly to the appointing authority or his designee, unless the appointing authority or another directive provides otherwise. If there are respondents, an additional copy for each respondent should be submitted to the appointing authority.

§ 519.4 Informal investigations and boards of officers.

(a) *Composition.* These informal procedures may be used by a single investigating officer or by a board of two or more members. (One officer is not designated a board unless formal procedures are directed.) All members are voting members. Appointment of advisory members is unnecessary since persons with special expertise may be consulted informally whenever desired. The senior member present acts as president. There is no recorder. The duties of each member are as prescribed by the president. A quorum is required to be present only when voting on findings and recommendations (see § 519.3(m)).

(b) *Procedure.* An informal investigation or board may use whatever method it finds most efficient and effective for acquiring relevant information (§ 519.3 provides general guid-

ance). A board may divide witnesses, issues, or evidentiary aspects of the inquiry among the members for individual investigations and development, holding no collective meeting until ready to review all the information collected to determine its completeness. Although witnesses may be called to present testimony in a formal manner, relevant information also may be obtained by personal interview, correspondence, telephone inquiry, or other informal means.

(c) *Interested persons.* Informal procedures are not intended to provide a hearing for persons who may have an interest in the subject of the investigation or board. No respondents will be designated, and no one is entitled to the rights of a respondent. This does not preclude the investigating officer or board from making any relevant findings or recommendations (see § 519.1(d)).

§ 519.5 Formal boards of officers.

GENERAL

(a) *Members.* (1) *Voting members.* All members of a formal board of officers are voting members except as provided elsewhere in this paragraph, in other applicable directives, or in the letter of appointment.

(2) *President.* The senior voting member present acts as president. The senior voting member appointed will be at least a major, except where the appointing authority determines that is impracticable because of military exigencies. The president has the following responsibilities:

(i) *Administrative.* He will preserve order, determine time and uniform for sessions of the board, recess or adjourn the board as necessary, decide routine administrative matters necessary for expeditious and efficient conduct of the business of the board, and supervise the recorder to ensure that all business of the board is properly conducted and that the report of proceedings is submitted promptly.

(ii) *Procedural.* When no legal advisor has been appointed, the president will rule on evidentiary and procedural matters. His ruling on any such matter, other than a challenge, may be reversed by majority vote of the voting members present (see § 519.3(d)).

(3) *Recorder.* A commissioned or warrant officer may be designated as recorder by the letter of appointment. (Assistant recorders may also be designated and may perform any duty the recorder may perform.) A recorder so designated is a nonvoting member of the board. If a recorder is not designated in the letter of appointment, the junior member acts as recorder and is a voting member.

(4) *Legal advisor.* The letter of appointment may appoint a judge advocate as legal advisor. However, if not required by another directive, the appointment of a legal advisor may be authorized only by a general court-martial convening authority after consultation with his staff judge advocate. (That staff judge advocate is then responsible to provide or arrange for the legal advisor. A legal advisor is a non-voting member. He rules finally on challenges for cause made during the course of the proceedings, except a challenge against himself (§ 519.5(g)(3)), and on all evidentiary and procedural matters (§ 519.3(d)), but he may not dismiss any question or issue before the board. The legal advisor may confer with the recorder, respondent, and counsel to assist in clarifying procedural matters. In appropriate cases, and with the respondent and his counsel present, the legal advisor may advise the board as to relevant legal and procedural matters.

(5) *Members with special technical knowledge.* Persons with special technical knowledge may be appointed as voting members or, unless there is a respondent, as advisory members without vote. Such persons need not be commissioned officers. If appointed as advisory members, they need not participate in the board proceedings except as directed by the president. (§ 519.3(e) with regard to participation in the board's deliberations.) The report of proceedings should indicate the limited participation of an advisory member.

(b) *Attendance of members.*—(1) *General.* Attendance at the proceedings of the board is the primary duty of each member and takes precedence over all other duties. A member must attend scheduled sessions of the board, if physically able, unless excused in advance by the appointing authority. However, the board may proceed even though a member is absent, provided the necessary quorum is present (see (4) of this section). If the recorder is absent, the assistant recorder, if any, or the junior member of the board will assume the duties of recorder, and the board may continue with its proceedings at the discretion of the president.

(2) *Quorum.* Unless another directive requires a larger number, a majority of the appointed voting members of a board (other than nonparticipating alternate members) constitutes a quorum and must be present at all sessions. Where another directive prescribes specific qualifications for any voting member (e.g., component, branch, or technical or professional qualifications), that member is essential to a quorum and must be present at all board sessions.

(3) *Alternate members.* An unnecessarily large number of officers will not be appointed to a board of officers with the intention of using only those available at the time of the board's meeting. However, the letter of appointment may designate alternate members to serve on the board, in the sequence listed, if necessary to constitute a quorum in the absence of a regular member. These alternate members may then be added to the board at the direction of the president without further consultation with the appointing authority. A member added thereby becomes a regular member with the same obligation to be present at all further proceedings of the board (see paragraph (b)(1) of this section).

(4) *Member not present at prior sessions.* A member who has not been present at a prior session of the board (e.g., absent member; alternate member newly authorized to serve as a member; newly appointed member) may participate fully in all subsequent proceedings, provided he first thoroughly familiarizes himself with the proceedings held and the evidence accepted during his absence or prior to his participation. The report of proceedings will reflect how the member so familiarized himself. Except as directed by the appointing authority, however, a duly appointed member who has been excused from or otherwise was not available for a substantial portion of the proceedings, as determined by the president, held by a quorum of the board in his absence, will no longer be considered a member of the board in that particular case, even if he later becomes available to serve.

(c) *Duties of recorder.* (1) *Prior to a session.* The recorder is responsible for administrative preparation and support for the board. He will give timely notice to all participants of the time, place, and prescribed uniform for the session. This includes the board members, witnesses, and, if any, the legal advisor, respondent, counsel, reporter, and interpreter. Only the notice to a respondent required by § 519.5(e), need be in writing. It is usually appropriate to notify each respondent's commander or supervisor as well. The recorder will make necessary arrangements for the presence at the hearing of witnesses who are to testify in person, including attendance at Government expense of military personnel and Government civilian employees ordered to appear and of other civilians voluntarily appearing pursuant to invitational travel orders (§ 519.3 (h)(1)). He will see that the site for the session is adequate and in good order. He will arrange necessary personnel support (clerk, reporter, interpreter), recording equipment, stationery, and other supplies. He will arrange to have available when needed at the hearing all necessary Privacy Act Statements and, with appropriate authentication, all required records, documents and real evidence. Subject to security require-

ments, he will ensure that all appropriate records and documents referred with the case are furnished to any respondent or counsel. He will take whatever other action is necessary to ensure a prompt, full, and orderly presentation of the case.

(2) *During the session.* The recorder will read the letter of appointment at the initial session, or determine that the participants have read it; note for the record at the beginning of each session the presence or absence of the members of the board and, of any, the respondent and counsel; administer oaths as necessary; execute all orders of the board; and conduct the presentation of evidence and examination of witnesses to bring out all the facts in an impartial manner.

(3) *After the proceedings.* The recorder is responsible for the prompt and accurate preparation of the report of proceedings. He will arrange authentication of the completed report. Whenever practicable, the report will be hand-carried, including delivery to the appointing authority or his designee.

RESPONDENTS

(d) *Designation.*—(1) *General.* A respondent will be designated when the appointing authority desires to provide a hearing for a person with a direct interest in the proceedings. The mere fact that an adverse finding may be made against a person or adverse action recommended against him, however, does not necessitate his being designated a respondent (see § 519.1(d)). Nevertheless, when the primary purpose of the board is to determine whether some adverse action should be taken against a particular person, that person will be designated a respondent.

(2) *Prior to proceedings.* When it is apparent at the time a formal board is appointed that a person should be designated a respondent, the designation should be made in the letter of appointment.

(3) *During the proceedings.* If, during the course of formal board proceedings, it appears to the legal advisor or, if none, the president that a person not previously designated a respondent should be so designated, a recommendation to that effect, with supporting information, will be presented to the appointing authority. The appointing authority, at his discretion, may designate a respondent at any point in the proceedings. When a respondent is so designated, he will be allowed a reasonable time to obtain counsel (§ 519.5(f)) and to prepare subsequent sessions. The record of proceedings to that point and all evidence received by the board will be made available for examination by the newly designated respondent and his counsel. The respondent may request that specified witnesses who have previously testified be recalled for cross-examination. If circumstances do not permit the recalling of a witness, his written statement may be obtained. In the absence of compelling justification, the proceedings will not be delayed pending the obtaining of any such statement. Any testimony given by a person as a witness may be considered even though he is subsequently designated a respondent.

(e) *Notice.* The recorder will, at a reasonable time in advance of the first session of the board concerning a respondent (including a respondent designated during the course of the proceedings), provide that respondent a copy of all unclassified documents in the case file, together with a letter of notification. In the absence of special circumstances or a different period established by the directive authorizing the board, five normal working days is deemed a reasonable time. The letter of notification will indicate:

The date, hour, and place of the session and the appropriate military uniform, if applicable;

The matter to be investigated, including specific allegations, in sufficient detail to enable the respondent to prepare;

The respondent's rights with regard to counsel (see § 519.5(f));

The name and address of each witness expected to be called by the recorder;

The respondent's rights to be present, present evidence, and call witnesses (see § 519.5(h)(1)); (only if the board involves classfied matters) that there are relevant classfied materials which the respondent and his counsel may examine on request; and that, if necessary, the recorder will assist in arranging clearance or access (see AR 604-5 and para 7-107, DOD 5200.1-R).

(f) *Counsel.*—(1) *Entitlement.* A respondent is entitled to have counsel to assist him and, to the extent permitted by security classification, to be present with him at all open sessions of the board. Counsel may also be provided for the limited purpose of taking a witness' statement or testimony before his departure, if respondent has not yet obtained regular counsel. Appointed counsel will not be furnished to persons who are not civilian employees or members of the military.

(2) *Who may act.*—(i) *Civilian counsel.* Any respondent may be represented by civilian counsel not employed by and at no expense to the Government. A Government civilian employee may not act as counsel for compensation or if it would be inconsistent with faithful performance of his regular duties (see 18 U.S.C. 205). In addition, a civilian employee of the Department of the Army may act as counsel only if his services are rendered while on leave or outside normal hours of employment.

(ii) *Military counsel for military respondents.* If a military respondent does not retain civilian counsel, he is entitled to be represented by military counsel designated by the appointing authority. A military respondent may request appointment of a specific military counsel from the command or organization of the appointing authority, from the command of the respondent's general court-martial convening authority, or from the command of the general court-martial convening authority nearest the place where the board will convene. If all of these are the same, the respondent may request appointment of a specific military counsel from the command of the general court-martial convening authority next nearest the place where the board will convene. Any request for specific military counsel will be submitted to the appointing authority. The appointing authority, after consultation with the general court-martial convening authority of the person requested, will decide finally whether the person requested is reasonably available, taking into consideration expense, distance, and the regular duties of the person requested. In the absence of exceptional circumstances, a person who would have to travel more than 250 miles from his place of duty to the place where the board will convene will not be considered reasonably available. If reasonably available, the person requested will be appointed in lieu of any other military counsel. If the counsel requested is not reasonably available, the appointing authority will designate military counsel to represent the respondent, unless the respondent declines such counsel. In any case in which a respondent declines the services of a qualified designated counsel, he is not entitled to have a different counsel designated.

(iii) *Military counsel for civilian respondents.* In boards appointed under the authority of this part, Federal civilian employees, including those of nonappropriated fund instrumentalities, will be provided military counsel under the same conditions and procedures as if they were military respondents.

(3) *Delay.* Whenever practicable, the board proceedings will be held in abeyance pending action on a respondent's first request for specific military counsel or respondent's reasonable and diligent efforts to obtain civilian counsel. However, the proceedings should not be delayed unduly to permit a respondent to obtain a particular counsel, civilian or military, or to accommodate the schedule of such counsel. The proceedings normally will not be delayed on account of a second request for specific military counsel.

(4) *Qualifications.* Counsel should be sufficiently mature and experienced to be of genuine assistance to

the respondent at the proceedings. Unless the specific directive under which the board is appointed expressly requires it, counsel is not required to be a lawyer.

(5) *Independence.* No counsel for a respondent will be censured, reprimanded, admonished, coerced, or rated less favorably as a result of the lawful and ethical performance of his duties or the zeal with which he represents the respondent. Any question concerning the propriety of counsel's conduct in the performance of his duty will be referred to the servicing judge advocate.

(g) *Challenges for cause.*—(1) *Right of respondent.* A respondent is entitled to have the matter at issue decided by a board composed of impartial members. He may challenge for cause the legal adviser and any voting member of the board who does not meet that standard. Lack of impartiality is the only basis on which a challenge for cause may be made at the board proceedings. Any other matter affecting the qualification of a board member may be brought to the attention of the appointing authority (see § 519.3(b)).

(2) *Making a challenge.* A challenge should be made as soon as the respondent or his counsel is aware that grounds exist; failure to do so normally will constitute a waiver. If possible, all challenges and grounds should be communicated to the appointing authority before the board convenes. When the board convenes, the respondent or his counsel may question members of the board under oath to determine whether to make a challenge. Such questions must relate directly to the issue of impartiality. Discretion should be used, however, to avoid revealing prejudicial matters to other members of the board; if a challenge is made after the board convenes, only the name of the challenged member will be indicated in open session, not the reason for believing the member is not impartial.

(3) *Who decides challenges.* The appointing authority decides any challenge to a single member board of officers and may decide other challenges made before the board convenes. Otherwise, a challenge is decided by the legal adviser or, if none or if challenged, by the president. If there is no legal adviser and the president is challenged, that challenge is decided by the next senior voting member.

(4) *Procedure.* Challenges for lack of impartiality not decided by the appointing authority will be heard and decided at a session of the board attended by the legal adviser, president or next senior member who will decide the challenge, the member challenged, respondent, his counsel, and the recorder. The respondent making the challenge, or his counsel, may question the challenged member under oath and present any other relevant evidence to support the challenge. The recorder also may present any relevant evidence on the issue. The member who is to decide the challenge may question the challenged member and any other witness and may direct the recorder to present additional evidence. If more than one member is challenged at a time, each challenge will be decided independently, in descending order of the challanged member's rank, in the same manner as if that were the only challenge pending.

(5) *Sustained challenge.* If the person deciding a challenge determines to sustain it, he will excuse the challenged member from the board at once, and the person excused will no longer be counted as a member of the board. If this prevents a quorum (§ 519.5(b)(2)), the board will adjourn to allow the addition of another member. Otherwise the board proceedings will continue.

(h) *Presentation of evidence.*—(1) *Rights of respondent.* Except for good cause shown in the report of proceedings, a respondent is entitled to be present, with his counsel, at all open sessions of the board which deal with any matter which concerns that respondent. He may:

Examine and object to the introduction of real and documentary evidence, including written statements;

Object to the testimony of witnesses and cross-examine witnesses other than his own;

Call witnesses and otherwise introduce evidence;

Testify as a witness; however, no adverse inference may be drawn from his exercising his privilege against self-incrimination (see § 519.3(g)(3)(v)).

(2) *Assistance.* Upon receipt of a timely written request, the recorder will assist the respondent in obtaining documentary and real evidence in possession of the Government and in arranging for the presence of witnesses for the respondent. The respondent is entitled to compulsory attendance at Government expense of witnesses who are service members or Federal civilian employees, to authorized reimbursement of expenses of other civilian witnesses who voluntarily appear in response to invitational travel orders, and to official cooperation in obtaining access to evidence in possession of the Government, to the same extent as is the recorder on behalf of the Government. However, if the recorder believes any witness' testimony or other evidence requested by the respondent is irrelevant or unnecessarily cumulative, or that its significance is disproportionate to the delay, expense, or difficulty in obtaining it, he will submit the respondent's request to the president, who will decide (see § 519.3(d)) whether the recorder should comply with the request. Denial of the request does not preclude the respondent from obtaining the evidence or witness without the recorder's assistance and at no expense to the Government. Nothing in this paragraph relieves a respondent (or his counsel) of the obligation to exercise due diligence in preparing and presenting his own case. The fact that any evidence or witness desired by the respondent is not reasonably available (§ 519.3(g)(2)) normally is not a basis for terminating or invalidating the proceedings.

(i) *Argument.* After all evidence has been received, the recorder and the respondent, or his counsel, may make a final statement or argument. The recorder may make the opening argument and, if any argument is made on behalf of a respondent, the closing argument in rebuttal.

(j) *After the hearing.*—(1) *Written brief.* At the option of the appointing authority, a respondent may be given an opportunity to examine the report of proceedings, including the findings and recommendations of the board, and to submit a written brief on his own behalf before the appointing authority takes his action. The appointing authority should specify the date by which he must receive the brief if it is to be considered.

(2) *Copy of the report of proceedings.* Upon approval or other action on the report of proceedings by the appointing authority, the respondent, or his counsel, will be provided a copy of the report, including all exhibits and inclosures which pertain to that respondent. Portions of the report, exhibits, and inclosures may be withheld from a respondent only as required by security classification or for other good cause determined by the appointing authority and explained to the respondent in writing.

(k) *Waiver.* Any right conferred by this part is conclusively waived by the respondent's failing to exercise it at the appropriate point in the proceedings, unless he has made a request to exercise it and that request has been denied.

APPENDIX A—SAMPLE LETTERS OF APPOINTMENT

I. Appointment of a Standing Board of Officers Using Formal Procedures

DEPARTMENT OF THE ARMY HEADQUARTERS, 20TH INFANTRY DIVISION AND FORT BLANK, FORT BLANK, WEST DAKOTA 88888

ABCD-AG 1 September 1977

SUBJECT: Appointment of Board of Officers

Major Robert A. Jones
Headquarters and Headquarters Company
3d Battalion, 1st Infantry Brigade
20th Infantry Division
Fort Blank, WD 88888

1. A board of officers is hereby appointed pursuant to chapter 14, AR 635-200, to determine whether service members referred

to the board as respondents should be discharged for misconduct.

2. The following members are appointed to the board:

MAJ Robert A. Jones, HHC, 3d Bn, 1st Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member (President)

CPT Paul R. Wisniewski, Co A, 2d Bn 3d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member

CPT David B. Braun, Co C, 1st Bn, 3d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member

CPT John C. Solomon, HHC, 2d S & T Bn, DISCOM 20th Inf Div, Ft Blank, WD 88888 Alternate member (see para 5-2*c*, AR 15-6)

1LT Steven T. Jefferson, Co B, 2d Bn, 2d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Recorder (without vote)

3. The board will meet at the call of the President. It will utilize the procedures set forth in AR 635-200, supplemented by the procedures in AR 15-6 applicable to formal boards with respondents. Respondents will be referred to the board by separate correspondence.

4. Reports of proceedings will be summarized, prepared substantially in the format at appendix C, AR 635-200, and submitted to this headquarters, ATTN: ABCD-AG-PA. Reports will be submitted within three working days of the conclusion of each case. The Adjutant General's office will furnish necessary administrative support, including a stenographer, for the board. Legal advice will be obtained, as needed, from the Staff Judge Advocate's office.

5. The board will serve until further notice.

FOR THE COMMANDER:

RICHARD W. RICARDO
Lieutenant Colonel, AGC
Adjutant General

CF:
CPT Wisniewski
CPT Braun
CPT Solomon
1LT Jefferson

II. Referral of a Respondent to a Standing Board

DEPARTMENT OF THE ARMY HEADQUARTERS, 20TH INFANTRY DIVISION AND FORT BLANK, FORT BLANK, WEST DAKOTA 88888

ABCD-AG 7 September 1977

SUBJECT: Referral of Respondent

Major Robert A. Jones
Headquarters and Headquarters Company
3d Battalion, 1st Infantry Brigade
20th Infantry Division
Fort Blank, WD 88888

1. Reference letter, this Headquarters, dated 1 September 1977, subject: Appointment of Board of Officers.

2. Private First Class Sandra J. Stone, 123-45-6789, Headquarters and Headquarters Company, DISCOM, is hereby designated a respondent before the board appointed by the referenced letter. The board will consider whether PFC Stone should be discharged for misconduct by reason of frequent incidents of a discreditable nature with civil or military authorities. The correspondence and supporting documentation recommending referral to a board of officers are inclosed.

3. Captain Dennis M. Corrigible, JAGC, 20th Administration Company, 20th Infantry Division, is designated counsel for PFC Stone.

4. For the consideration of this case only, Captain Helen R. Reese, WAC, Headquarters, Fort Blank Support Command, 20th Infantry Division and Fort Blank, is designated a voting member of the board, vice Captain David B. Braun, Infantry, Company C, 1st Battalion, 3d Infantry Brigade, 20th Infantry Division (para 1-20*b*(2), AR 635-200).

FOR THE COMMANDER:

1 Incl JOHN P. QUILL
as Captain, AGC
Assistant Adjutant General

CF:
CPT Reese
CPT Wisniewski
CPT Braun
CPT Solomon
1LT Jefferson
CPT Corrigible
PFC Stone

III. Appointment of a Single Officer as a Board of Officers, with Legal Advisor and Advisory Member, Using Formal Procedures

DEPARTMENT OF THE ARMY HEADQUARTERS, 20TH INFANTRY DIVISION AND FORT BLANK, FORT BLANK, WEST DAKOTA 88888

ABCD-CG 1 September 1977

Subject: Appointment as a Board of Officers to Investigate Alleged Corruption and Mismanagement

Colonel Keith F. Miller
Headquarters, 20th Infantry Division and Fort Blank
Fort Blank, WD 88888

1. You are hereby appointed a board of officers, pursuant to AR 15-6, to investigate allegations of corruption and mismanagement in the office of the Fort Blank Provost Marshal. The scope of your investigation will include whether traffic tickets are being properly processed by military police personnel; whether supervisory personnel are receiving money or other personal favors from subordinate personnel in return for tolerating the improper processing of traffic tickets; whether supervisory personnel have been derelict in the performance of their duties; whether existing standing operating procedures provide adequate accounting for traffic tickets issued; and whether any other factors exist which contributed to the allegations under investigation. Inclosed herewith is a report of proceedings of an earlier informal investigation into alleged improper processing of traffic tickets which was discontinued when it appeared that supervisory personnel may have been involved.

2. The board will utilize formal procedures under AR 15-6. The Provost Marshal, COL Henry L. Fisher, the Deputy Provost Marshal, MAJ Joseph C. Crabb, the Operations Officer, CPT Paul J. Mackerel, and the Provost Sergeant, SGM Cecil P. Longer, are designated respondents. Additional respondents may be designated based on your recommendations during the course of the investigation. Counsel for each respondent, if requested, will be designated by subsequent correspondence.

3. Major Vincent L. Marone, JAGC, 20th Administrative Company, 20th Infantry Division, will serve as legal advisor to the board, Major Donald H. Gorham, Operations Officer, Office of the Provost Marshal, Fort Dudley, East Dakota, with the concurrence of his commander, will serve as an advisory member of the board. The office of the Adjutant General, this Headquarters, will provide necessary administrative support, including a stenographer. The Fort Blank Resident Office, CIDC, will provide technical support, including the preservation of physical evidence if needed.

4. The Report of Proceedings will be prepared on DA Form 1574 and submitted to me within 60 days.

HAROLD J. BAYONNE
Major General, USA
Commanding

CF:
COL Fisher
MAJ Crabb
CPT Mackerel
SGM Longer
MAJ Marone
MAJ Gorham

IV. Appointment of an Investigating Officer Under AR 15-6 and Other Directives

DEPARTMENT OF THE ARMY HEADQUARTERS, 20TH INFANTRY DIVISION AND FORT BLANK,FORT BLANK, WEST DAKOTA 88888

ABCD-AG 1 September 1977.

Subject: Appointment of Investigating Officer

Captain Charles R. Adams
Headquarters and Headquarters Company
1st Battalion, 2d Infantry Brigade
20th Infantry Division
Fort Blank, WD 88888

1. You are hereby appointed an investigating officer pursuant to AR 15-6 and paragraph 3-3, AR 210-7, to conduct an informal investigation into complaints that sales representatives of the Fly-By-Nite Sales Company have been conducting door-to-door solicitation in the River Bend family housing area in violation of AR 210-7. Details pertaining to the reported violations are contained in the inclosed file prepared by the Commercial Solicitation Branch, Office of the Adjutant General, this headquaters (Incl 1).

2. All witness statements will be sworn. You will make findings as to whether there have been violations of AR 210-7 by the Fly-By-Nite Sales Company and recommendations as to whether a show cause hearing should be initiated pursuant to paragraph 3-5, AR 210-7, and whether temporary suspension of the company's or individual agents' solicitation privileges appears warranted pending completion of the show cause hearing.

3. Your findings and recommendations will be submitted in four copies on DA Form 1574 to this headquarters, ATTN: ABCD-AG, within seven days.

FOR THE COMMANDER:

1 Incl JOHN P. QUILL
as Captain, AGC
Assistant Adjutant General

V. Appointment of an Investigating Officer in a Case with Potential Privacy Act Implications

DEPARTMENT OF THE ARMY HEADQUARTERS, 1ST BRIGADE, 20TH INFANTRY DIVISION FORT BLANK, WEST DAKOTA 88888

ABCD-BA-AG 1 September 1977

Subject: Appointment as Investigating Officer

First Lieutenant Joseph D. Zealous
Company A, 2d Battalion, 1st Brigade
20th Infantry Division
Fort Blank, WD 88888

1. You are hereby appointed an investigating officer pursuant to AR 15-6 and para-

graph 2-22, AR 380-5, to investigate into the circumstances surrounding the finding of a CONFIDENTIAL document in a trash can in the office of the 3d Battalion S-3 on 31 August 1977.

2. Your investigation will use informal procedures under AR 15-6. You will make findings as to whether compromise has occurred, responsibility for the security violation, and the adequacy of existing security procedures. A preliminary inquiry into the incident proved inconclusive.

3. There are no known suspects at this time. If in the course of your investigation you come to suspect that a certain person may be responsible for the violation, that person will be advised of his rights under Article 31, UCMJ, or the Fifth Amendment, as appropriate. In addition, he or she will be provided a Privacy Act Statement prior to any (further) solicitation of personal information. Assistance in this respect may be obtained from the office of the Staff Judge Advocate.

4. Your findings and recommendations will be submitted to the Brigade S-2 within ten days on DA Form 1574.

FOR THE COMMANDER:

PATRICK E. JOHNSON
Captain, AGC
Adjutant

APPENDIX B—SUGGESTED PROCEDURE FOR BOARDS OF OFFICERS WITH RESPONDENTS

[*Abbreviations*]

Note. The following abbreviations are used in this suggested procedure:

PRES: President of the board of officers.

LA: Legal Advisor.

LA (PRES): Legal Advisor, if one has been appointed; otherwise the board President.

RCDR: Recorder (junior member of the board if no recorder has been appointed).

RESP: Respondent.

RESP (COUNSEL): Respondent or respondent's counsel, if any.

If the board is composed of only one member, that member has the responsibilities of both PRES and RCDR.

* * *

[*Recorder's duties*]

Note. Prior to the initial hearing, RCDR will perform the duties prescribed in § 519.5(c)(1). During the hearing, RCDR will comply with the requirements of § 579.5(c)(2).

PRELIMINARY MATTERS

PRES: This hearing will come to order. This is a board of officers called to determine ———.

* * *

[*Counsel*]

Note. When RESP is without counsel:

LA (PRES): ——, you may, if you desire, obtain civilian counsel at no expense to the Government for this hearing. If you do not obtain civilian counsel, you may request a specific military counsel, who will be furnished if reasonably available. Or you may request that the appointing authority designate military counsel for you. Do you have counsel?

RESP: No (Yes).

Note. If RESP has counsel, that counsel should be identified at this point for the record. If RESP does not have counsel, he should be asked:

LA (PRES): Do you desire to have military counsel appointed?

RESP: Yes (No).

Note. If RESP answers "yes," the hearing should be adjourned and the appointing authority should be requested to appoint counsel for RESP (see § 519.5(f)(2). If counsel is supplied, that counsel should be identified for the record when the board reconvenes.

* * *

[*Oath for reporter and interpreter*]

Note. A reporter and interpreter, if used, should be sworn.

RCDR: The reporter will be sworn.

RCDR: You swear (or affirm) that you will faithfully perform the duties of reporter to this board. So help you God.

REPORTER: I do.

RCDR: The interpreter will be sworn.

RCDR: You swear (or affirm) that you will faithfully perform the duties of interpreter in the case now in hearing. So help you God.

INTERPRETER: I do.

* * *

[*Letter of appointment*]

RCDR: The board is appointed by Letter of Appointment, Headquarters, —— dated ——, 19——. Have all members of the board read the letter of appointment? (If not, the letter of appointment is read aloud by RCDR or silently by any member who has not read it.)

Note: When RESP has been designated by a separate letter of appointment, the same procedure applies to that letter of appointment.

RCDR: Request the letter of appointment be attached to these proceedings as Inclosure I.

LA (PRES): The letter of appointment will be attached as requested.

[*Accounting for personnel*]

RCDR: The following members of the board are present:

_____

_____

_____

The following members are absent:

_____

Note. All personnel of the board, including RESP and COUNSEL, if any, should be accounted for as present or absent at each session. If absent, the reason for the absence should be stated, if known, and whether the absence was authorized by the appointing authority.

[*Challenges*]

LA (PRES): ——, you may challenge any member of the board (or the legal advisor) for lack of impartiality. Do you desire to make a challenge?

RESP (COUNSEL): No. (The respondent challenges ———.)

Note. If a challenge for lack of impartiality is made by RESP, the LA, PRES or next senior member, as appropriate, determines the challenge. See § 519.5(g). If a challenge is sustained and the remaining members of the board are less than a quorum, the board should recess until additional members are added. See § 519.5(b)(2).

* * *

[*Oaths for members*]

Note. RCDR swears board members, if required. PRES then swears RCDR, if required.

RCDR: The board will be sworn.

Note. All persons in the room stand while the oath is administered. Each voting member raises his right hand as his name is called by RCDR in administering the following oath:

RCDR: You, Colonel ——, Lieutenant Colonel ——, Major ——, do swear (Affirm) that you will faithfully perform your duties as a member of this board; that you will impartially examine and inquire into the matter now before you according to the evidence, your conscience, and the laws and regulaltions provided; that you will make such findings of fact as are supported by the evidence of record; that, in determining those facts, you will use your professional knowledge, best judgment and common sense; and that you will make such recommendations as are appropriate and warranted by your findings, according to the best of your understanding of the rules, regulations, policies, and customs of the service, guided by your concept of justice, both to the Government and to individuals concerned. So help you God.

MEMBERS: I do.

Note. The board members lower their hands but remain standing while the oath is administered to LA and to RCDR, if required.

PRES: You, ——, do swear (or affirm) that you will faithfully perform the duties of (legal advisor) (recorder) of this board. So help you God.

LA/RCDR: I do.

Note. All personnel now resume their seats.

* * *

Note. LA (PRES) may give general advice concerning applicable rules for the hearing.

[*Notification*]

RCDR: The respondent was notified of this hearing on ——, 19——.

Note. RCDR presents a copy of the letter of notification with a certification that the original was delivered (or dispatched) to RESP (§ 519.5(e)) and requests that it be attached to the proceedings as Inclosure—.

LA (PRES): The copy of the letter of notification will be attached as requested.

PRESENTATION OF GOVERNMENT'S EVIDENCE

[*Opening statement*]

Note. RCDR may make an opening statement at this point to clarify the expected presentation of evidence.

Note. RCDR then calls witnesses and presents other evidence relevant to the subject

of the proceedings. RCDR should develop the facts in a logical manner designed to facilitate understanding. The order of presentation is within RCDR's discretion except as otherwise directed by LA (PRES). The following examples are intended to serve as a guide to the manner of presentation, but not to the sequence.

[*Witness' statement*]

RCDR: I request that this statement of (witness) be marked as Exhibit — and received in evidence. The witness will not appear in person because ———.

LA (PRES): The statement will (not) be accepted.

Note. RCDR may read the statement to the board if it is accepted.

[*Real or documentary evidence*]

RCDR: I request that this (documentary or real evidence) be marked as Exhibit—and received in evidence.

Note. A foundation for the introduction of such evidence normally is established by a certificate, or by testimony of a witness, indicating its authenticity. LA (PRES) determines the adequacy of this foundation. If LA (PRES) has a reasonable basis to believe the evidence is what it purports to be, he may waive formal proof of authenticity.

[*Stipulation*]

RCDR: The recorder and respondent have agreed to stipulate———.

Note. Prior to acceptance of the stipulation by LA (PRES), he should verify that RESP joins in the stipulation. See paragraph 154b, MCM 1969 (Rev.), for further guidance with regard to stipulations.

LA (PRES): The stipulation is accepted.

Note. If the stipulation is in writing, it will be marked as an exhibit.

[*Witnesses*]

Note. RCDR conducts direct examination of each witness called by him or at the request of LA, PRES or members, RESP or COUNSEL may then cross-examine the witness. PRES, members of the board and LA may then question the witness, but LA (PRES) may control or limit questions by board members.

RCDR: The board calls———as a witness.

Note. A military witness approaches and salutes PRES, then raises his right hand while RCDR administers the oath. A civilian witness does the same but without saluting. See paragraph 112d MCM 1969 (Rev.) for further guidance with regard to oaths.

RCDR: You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God.

Note. If the witness desires to affirm rather than swear, the last sentence of the oath will be omitted.

WITNESS: I do.

Note. The witness then takes the witness chair. The following question is asked of every witness by the RCDR, no matter who called the witness:

RCDR: What is your full name (grade, branch of service, organization and station) (and address)?

Note. Whenever it appears appropriate and advisable to do so, the rights of a witness under the Uniform Code of Military Justice, Article 31, or the Fifth Amendment of the U.S. Constitution, should be explained to him. See § 519.3(g)(3)(v).

Note. If the report of proceedings will be filed in a system of records under the witness' name, that witness must be advised in accordance with the Privacy Act of 1974. See § 519.3(h)(5). Normally, this requirement will be applicable only to RESP.

Note. Questions then should be asked to develop the matter under consideration.

RCDR: The recorder has no further questions.

Note. RESP (COUNSEL) may cross-examine the witness. RCDR may then conduct a redirect examination.

RCDR: Are there any questions by the board?

Note. Any board member wishing to question the witness should first secure the permission of LA (PRES).

RCDR: Are there any questions by the Legal Advisor?

Note. If either the RCDR or RESP (COUNSEL) wishes to ask further questions after the witness has been examined by the board and LA, permission of the LA (PRES) should be obtained. Such a request normally should be granted unless the questions are repetitive or go beyond the scope of questions asked by the board.

Note. When all questioning is concluded, LA (PRES) announces:

LA (PRES): The witness is excused.

Note. LA (PRES) may advise the witness:

You are instructed (requested) not to discuss your testimony in this case with anyone other than the recorder, respondent or his counsel. If anyone else attempts to talk with you about your testimony, you should make the circumstances known to the person originally calling you as a witness.

Note. Verbatim proceedings should indicate that the witness (except RESP) withdrew from the room.

Note. Unless expressly excused from further attendance during the hearing, all witnesses remain subject to recall until the proceedings have been concluded. When a witness is recalled, the RCDR reminds such witness, after he has taken the witness stand:

RCDR: You are reminded that you are still under oath.

Note. The procedure in the case of a witness called by the board is the same as outlined above for a witness called by RCDR.

RCDR: I have nothing further to offer relating to the matter under consideration.

PRESENTATION OF RESPONDENT'S EVIDENCE

[*Opening statement*]

RESP (COUNSEL): The respondent has (an) (no) opening statement.

Note. RESP presents his stipulations, witnesses, and other evidence in the same manner as did RCDR. RCDR administers the oath to all witnesses and asks the first question to identify the witness

[*Respondent as witness*]

Note. Should the RESP be called to the stand as a witness, the RCDR will administer the oath and ask the following preliminary questions, after which the procedure is the same as for other witnesses:

RCDR: What is your name, (grade, branch of service, organization, and station) (address, position and place of employment)?

RESP: ———.

RCDR: Are you the respondent in this case?

RESP: Yes.

Note. RESP may be advised of his rights under the Uniform Code of Military Justice, Article 31 (see § 519.3(g)(3)(v)).

Note. If the report of proceedings will be filed in a system of records under RESP's name, RESP must be advised in accordance with the Privacy Act of 1974. See § 519.3(h)(5).

Note. When RESP has concluded his case he announces:

RESP (COUNSEL): The respondent rests.

* * *

[*Evidence requested by board*]

RCDR: The recorder has no further evidence to offer in this hearing. Does the board or LA wish to have any witnesses called or recalled?

PRES: It does (not).

LA: I do (not).

[*Arguments*]

LA (PRES): You may proceed with closing arguments.

RCDR: The recorder (has no) (will make) opening argument.

Note. RCDR may make the opening argument, and, if any argument is made on behalf of RESP, the rebuttal argument. Arguments are not required (see § 519.5(i)). If no argument is made, RESP or RCDR may say:

RESP (COUNSEL)/RCDR: The (respondent) (recorder) submits the case without argument.

[*Adjournment*]

PRES: The hearing is adjourned.

* * *

Note. The conclusion of the hearing does not end the duties of the board. It must arrive at findings based on the evidence and make recommendations supported by those findings. See section II, § 519.3. Findings and recommendations need not be announced to RESP, but in certain proceedings (e.g., elimination actions) they customarily are. RCDR is responsible for compiling the report of proceedings and submitting properly authenticated copies thereof to the appointing authority. See section III, § 519.3.

APPENDIX C—GUIDANCE FOR PREPARING PRIVACY ACT STATEMENTS

C-1. General. The Privacy Act of 1974 requires that, whenever personal information is solicited from an individual and the information will be filed so as to be retrievable by reference to the name or other personal identifier of the individual, he/she must be advised of the authority for soliciting the information, the principal purposes for

which the information is intended to be used, the routine uses which may be made of the information, whether disclosure is mandatory or voluntary, and the effect on the individual of not providing all or part of the information. Each Privacy Act statement must be tailored to the matter being investigated and the person being asked to provide information. The servicing judge advocate should be consulted for assistance in preparing Privacy Act Statements, as necessary.

C-2. Content. *a. Authority.* If a specific statute or Executive order authorizes the collection of the information, or authorizes the performance of a function which necessitates collection of the information, it will be cited as the authority for solicitation. For example, if a commander appoints an investigating officer to inquire into an Article 138, UCMJ, complaint under the provisions of AR 27-14, the statutory authority for solicitation of the information would be 10 U.S.C. 938. Regulations should not be cited as the authority. If no specific statute or Executive order can be located, the authority to cite is 10 U.S.C. 3012.

B. Principal purposes. The statement of principal purposes should consist of a short statement of the reason the investigation is being conducted. The following are examples for particular types of investigations.

(1) Administrative elimination proceeding under AR 635-200: "The purpose for soliciting this information is to provide the commander a basis for a determination regarding your retention on active duty, and if a determination is made not to retain you on active duty, the type of discharge to award."

(2) Investigation of an Article 138, UCMJ, complaint: "The purpose for soliciting this information is to obtain facts and make recommendations to assist the commander in determining what action to take with regard to (your) (complainant's) Article 138, UCMJ, complaint."

(3) Investigation of a security violation: "The purpose for soliciting this information is to determine whether the security violation under investigation resulted in a compromise of national defense information, to fix responsibility for the violation, and to determine whether changes should be implemented in existing security procedures."

(4) Flying evaluation board pursuant to AR 600-107: "The purpose for soliciting this information is to provide the commander a basis for a determination regarding your flying status."

c. Routine uses. In order to advise an individual of what routine uses may be made of solicited information, it is necessary to identify the system of records in which the report of proceedings will be filed. The routine uses will be summarized from the system notice and from the routine uses of general applicability in Part 505. The routine use statement may be introduced as follows: "Any information you provide is disclosable to members of the Department of Defense who have a need for the information in the performance of their duties. In addition, the information may be disclosed to Government agencies outside of the Department of Defense as follows:"

Then routine uses external to DOD should be listed.

d. Disclosure mandatory or voluntary; the effect of not providing information. Providing information is voluntary unless the individual may be ordered to testify. The following statements can be used in most situations.

(1) Respondent or other individual warned of his rights under Article 31, UCMJ, or the Fifth Amendment: "Providing the information is voluntary. There will be no adverse effect on you for not furnishing the information other than that certain information might not otherwise be available to the commander for his decision in this matter."

(2) Individual who may be ordered to testify: "Providing the information is mandatory. Failure to provide information could result in disciplinary or other adverse action against you under (the UCMJ or Army regulations) (civilian personnel regulations)."

Note: If in the course of the proceeding it is determined to advise an individual of his rights under Article 31, UCMJ, or the Fifth Amendment after he has been told it is mandatory to provide information, the advising official must be certain that the individual understands that such warning supersedes this portion of the Privacy Act Statement.

[FR Doc. 78-9092 Filed 4-5-78; 8:45 am]

[4910-14]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 77-189]

PART 110—ANCHORAGE REGULATIONS

Special Anchorage Area, Lake Murray, S.C.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a special anchorage at Lake Murray, S.C. This regulation is needed to provide adequate anchorage space for vessels with more than one (1) foot draft. Establishing this special anchorage area where vessels under 65 feet in length, when at anchor, are not required to exhibit anchor lights results in these recreational vessels anchoring in a safe area away from vessel traffic.

EFFECTIVE DATE: This amendment is effective on May 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Captain George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117 Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1477.

SUPPLEMENTARY INFORMATION: On November 21, 1977, the Coast Guard published a proposed rule (42 FR 59761) concerning this amendment. Interested persons were given until January 5, 1978, to submit comments. No comments were received.

DRAFTING INFORMATION: The principal persons involved in drafting this proposal are Lieutenant Commander H. E. Snow, Project Manager, Office of Marine Environment and Systems, and Mr. S. D. Jackson, Project Attorney, Office of Chief Counsel.

In consideration of the foregoing, Part 110 of Title 33 Code of Federal Regulations is amended by adding § 110.72c to read as follows:

§ 110.72c Lake Murray, S.C.

(a) The area beginning at the 125 foot pier of the Columbia Sailing Club, approximately latitude 34°03'51" N., longitude 81°13'37" W.; thence 167° to latitude 34°03'43.6" N., longitude 81°13'39.2" W.; thence easterly to latitude 34°03'45" N., longitude 81°13'32.1" W.; thence 347° to the shoreline, thence along the shoreline to the beginning.

(Sec. 1, 30 Stat. 98, as amended (33 U.S.C. 180); sec. 6(g)(1)(B), 80 Stat. 937 (49 U.S.C. 1655(g)(1)(B)); 49 CFR 1.46 (c)(2).)

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821, as amended, and OMB Circular A-107.

Dated: March 28, 1978.

E. L. PERRY,
Vice Admiral, U.S. Coast Guard
Acting Commandant.

[FR Doc. 70-9149 Filed 4-5-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 55—ENERGY RELATED AUTHORITY

Kansas; Withdrawal of Compliance Date Extension

AGENCY: Environmental Protection Agency.

ACTION: Rulemaking.

SUMMARY: This rule withdraws the Compliance Date Extension previously issued to the Kansas City, Kansas Board of Public Utilities, Kaw Station, Unit-3, Kansas City, Kansas. The action is necessary because of the failure of the source to meet the September 1, 1977, date for compliance, due to an inability to upgrade the original control equipment to the necessary efficiency to achieve compliance, as originally planned.

DATE: Effective April 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Gale A. Wright or Henry F. Rompage, 816-374-2576.

SUPPLEMENTARY INFORMATION: On January 25, 1978, there was published in the FEDERAL REGISTER (43 FR 3401) a notice of proposed rulemaking to withdraw the Compliance Date Extension previously issued to the Kansas City, Kansas Board of Public Utilities, Kaw Station, Unit K-3, Kansas City, Kans.

No comments have been received and the proposed withdrawal of Compliance Date Extension is hereby made final without change and is set forth below. This rulemaking is issued under the authority of sections 110, 113(d) and 301 of the Clean Air Act.

Signed at Washington, D. C. on March 30, 1978.

DOUGLAS COSTLE,
Administrator,
Environmental Protection Agency.

In part 55 of Chapter I, Title 40 of the Code of Federal Regulations, § 55.872 is amended by revising the introductory text of paragraph (a) and by revising paragraph (a)(1) to read as follows:

Subpart R—Kansas

§ 55.872 Compliance date extension.

(a) The Administrator issues a Compliance Date Extension to the Kansas City Board of Public Utilities, Kaw Station, Unit K-1, 2015 Kansas, Kansas City, Kansas (the source) upon the following conditions:

(1) *Regional Limitation.* Unit K-1 shall comply with KAPEC 28-19-31A by December 31, 1978, in accordance with the approved compliance plan.

* * * * *

[FR Doc 78-9154 Filed 4-5-78; 8:45 am]

[4710-02]

Title 41—Public Contracts and Property Mangement

CHAPTER 7—AGENCY FOR INTERNATIONAL DEVELOPMENT, DEPARTMENT OF STATE

[AIDPR Notice 78-1]

APPROVAL AND REPORTING PROCEDURES FOR CONTRACTOR PROPOSED SALARIES INCLUDING THOSE THAT EXCEED THE STATUTORY LIMITATION ON BASIC PAY TO THE BASIC PAY OF A CLASS 1 FOREIGN SERVICE RESERVE OFFICER (FSR-1).

AGENCY: Agency for International Development, State.

ACTION: Interim procurement instructions.

SUMMARY: This rule adds a new appendix I to the AID Procurement Regulations, which governs approvals of contractor proposed pay scales, including proposed pay that would exceed that of an FSR-1. This Appendix does the following: (a) Provides guidelines emphasing the need to use prudent judgement when considering salaries, especially any that exceed the FSR-1 statutory limitation (5 U.S.C. 5308 and Pub. L. 95-66); (b) establishes procedures for justification of salary approvals; (c) prescribes procedures for control numbering of approvals, retention and transmittal of records, and (d) establishes requirements for a new semiannual report of salary approval to be sent to the Deputy Administrator.

EFFECTIVE DATE: Effective as of September 7, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. V. Henry Walker, CM/SD/POL, Agency for International Development, Department of State, Washington, D.C., telephone 703-235-9107.

Appendix I is added to Chapter 7 of 41 CFR to read as set forth below:

APPENDIX I—APPROVAL AND REPORTING PROCEDURES FOR CONTRACTOR PROPOSED SALARIES INCLUDING THOSE THAT EXCEED THE STATUTORY LIMITATION ON BASIC PAY OF AN FSR-1

Purpose. This Appendix does the following: (a) Provides guidelines for the use of prudent judgement when considering salaries, especially salaries exceeding the FSR-1 maximum salary limitation (5 U.S.C. 5308 and Pub. L. 95-66); (b) establishes procedures for justification of salary approvals; (c) prescribes procedures for control numbers and submission of copies of salary approvals to SER/CM/SD/SUP: (d) establishes a new semiannual report of salary approvals for the Deputy Administrator.

Procedures

1. *Salary approvals.* In accordance with Handbook 14, AID Procurement Regulations 7-15.205-6(b)(2), contracting officer approvals of salaries exceeding the FSR-1 rate are to be based upon a memorandum from the technical office approved by the assistant administrator or mission director having program responsibility for the contract. The reasonableness of proposed salaries exceeding the FSR-1 level must be evaluated by the appropriate technical office in terms of the technical competence required, scope of supervisory responsibilities involved, and the relationship of the proposed salary level to the individual's customary salary level for similar work. Even though approval of salary levels above the FSR-1 rate are justified primarily by the assistant administrator or mission director having program responsibility, it is the contracting officer's responsibility to scrutinize increases as a matter of business acumen whenever AID negotiations deal with any salaries payable under contracts. Increases in the FSR-1 statutory salary limitation are not, and shall not be by themselves, a basis for upward salary revisions of contractor employees. Proposals for such revisions should be considered normally when contracts are renewed, and must be carefully reviewed and negotiated to ensure that increases are not automatically granted without corresponding increases in the quality or quantity of services rendered. Salaries below the FSR-1 maximum level should also be fully justified, even though formal approval procedures may not be involved. Personnel compensation negotiated and payable under AID contracts should be at the minimum levels necessary to attract needed technical services in a competitive market. Rates should be determined by the "market place" where the types of services are obtained. Using such criteria, very few salaries can be expected to approach or exceed the FSR-1 level.

Actual discussions with contractors concerning salaries should be held only by persons authorized to negotiate and execute contracts. (See AIDPR Appendix A).

2. *Justification of approvals.* There will be cases where the services required are so unique and highly specialized that few persons are available to perform them. In such instances, if justifications for exceptional salaries are needed, particularly where the salary would exceed the FSR-1 level, the project officer will be consulted. If no alternative can be found, the project officer will prepare a salary justification to support the negotiator's action. It is the negotiator's responsibility to see to it that such cases are fully justified and that a complete record of the rationale is included in his memorandum for the contract file.

3. *Approval control numbering and submission to SER/CM.* Copies of all approvals of salaries that exceed the FSR-1 level are required to be sent to SER/CM/SD/SUP. To assist SER/CM in determining that they are receving all copies from each approving office, approving officials will have a consecutive control number starting each fiscal year assigned to each approval by their office, the record of which will be maintained separately from other approval documents.

4. *Semiannual report to the Deputy Administrator.* Commencing with March 31, 1978, a new semiannual report listing all salary approvals that exceed the FSR-1 maximum level will be sent to the Deputy Administrator of AID by the Office of Contract Management.

This AIDPR Notice is an intermim procurement instruction, issued pursuant to 41 CFR 7-1.104-4.

Dated: March 27, 1978.

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

[FR Doc. 78-9054 Filed 4-5-78; 8:45 am]

[4910-06]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[FRA State Rail Docket No. 1; Notice No. 1]

PART 270—RAIL BANKING UNDER SECTION 810 OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Establishment of Part

AGENCY: Federal Railroad Administration ("FRA"), Department of Transportation ("DOT").

ACTION: Interim regulations and invitation for public comments.

SUMMARY: This rule establishes new regulations which set forth the interim procedures to be utilized by the Federal Railroad Administrator ("Administrator") in acquiring interests in rail properties to be included in the rail bank established under section 810 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("Act").

DATES: (1) Effective date. These regulations are effective on April 6, 1978. (2) Interested parties are encouraged to submit written comments on these regulations by May 22, 1978. Comments received will be considered by the Administrator before issuing final regulations.

ADDRESSES: Written comments should identify the docket and notice numbers and be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street SW., Washington, D.C. 20590. Written comments will be available for examination at the address noted in the preceeding sentence between 8:30 a.m. and 5 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT THE PRINCIPAL AUTHORS OF THIS PART:

Lawrence A. Friedman, Attorney-Advisor, Office of Chief Counsel, Federal Railroad Administration, 400 7th Street SW., Washington, D.C. 20590, 202-426-8220.

F. Colin Pease, Chief, State Programs Division, Office of State Assistance Programs, Federal Railroad Administration, 400 7th Street SW., Washington, D.C. 20590, 202-426-1677.

SUPPLEMENTARY INFORMATION: Section 810 of the Act, 49 U.S.C. 1653a, requires the Secretary of Transportation, after consultation with the Secretaries of the Interior and Commerce, to establish a rail bank. The rail bank is to consist of interests in rail trackage and other rail properties acquired by the Secretary, for purposes of preserving abandoned rail trackage and other rail properties over which service was operated on the date of enactment of the Act (February 5, 1976) in certain areas of the United States in which fossil fuel natural resources or agricultural production is located. The Secretary may also acquire for inclusion in the rail bank rail properties listed in part III, section C, of the final systems plan issued by the United States Railway Association under title II of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 701, et seq.). The acquisition of those property interests can be by means of lease, purchase, or any other manner that the Secretary considers appropriate.

The authority to implement section 810 has been delegated to the Administrator (49 CFR 1.49(u)). In promulgating these regulations the Administrator has considered the views of the Secretaries of the Interior and Commerce regarding the rail bank.

Although section 810 provides that the rail bank shall be established within 180 days of the enactment of the Act on February 5, 1976, appropriations were not provided until the Supplemental Appropriations Act for 1977 was enacted on May 4, 1977 (Pub. L. 95-26). The 180 day period following that enactment expired on November 1, 1977. To avoid any further delay in implementing section 810, interim, rather than proposed regulations are now issued to establish the rail bank and the procedures by which the Administrator will acquire interests in rail properties for inclusion in the rail bank. The Administrator will consider public comments before issuing final regulations.

The regulations provide that any state, organization, or other member of the public ("proponent") may propose that rail trackage and other rail properties be included in the rail bank. In addition, the Administrator reserves the right to include in the rail bank any rail trackage and other rail property he considers appropriate, whether or not it is recommended in a proposal.

In selecting rail trackage and other rail properties to be included in the rail bank, the Administrator concurs in the policy expressed in the House Appropriations Committee's Report on the 1977 Supplemental Appropriations Bill (H.R. Rep. No. 68, 95th Cong., 1st Sess. 125 (1977)). The Committee recommended including in the rail bank only those rail trackage and other rail properties, which show a reasonable potential for future movement of fossil fuel natural resources or agricultural commodities. The Committee also indicated that rail banking should be undertaken by the States with funds provided under the Local Rail Service Assistance Programs (§ 402 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. 762 and section 5(f)-(o) of the Department of Transportation Act, 49 U.S.C. 1654(f)-(o)), and that section 810 funds should be used only when the rail banking would strain the State's local rail service funds. Accordingly, the Administrator will evaluate rail trackage and other rail properties recommended for inclusion in the rail bank on the basis of the policy indicated in the Committee report. The Administrator does, however, reserve the right to include rail trackage and other rail properties in the rail bank despite a State's decision not to preserve the right-of-way under its local rail service assistance program, if the Administrator finds that such an inclusion would serve a strong national interest. It is the responsibility of the proponent to provide to the Administrator information which indicates that rail banking is consistent with this policy.

The Administrator has evaluated the anticipated regulatory impact of these regulations. As the regulations establish procedures under which interested members of the public may provide input to the rail bank program, but do not impose any requirements on the public, the Administrator finds that there are no significant costs associated with these regulations. The Administrator has also determined that these regulations are not significant within the meaning of Section 2 of Executive Order 12044 of March 23, 1978 (43 FR 12661), and that under DOT Order 2050.4 implementing Executive Order 11821 and Office of Management and Budget Circular A-107, these regulations are not a major proposal requiring preparation of an economic impact statement. Finally, the Administrator has concluded that under DOT Order 5610.1B, published in 39 FR 35234, October 30, 1974, these regulations do not significantly affect the quality of the human environment. A negative declaration has been prepared and is available to the public upon request.

In consideration of the foregoing, Chapter II of 49 CFR is amended by adding a new Part 270 providing as follows:

Sec.

270.1 Definitions.
270.3 Establishment of Rail Bank.
270.5 Rights-of-Way Eligible to be Included in the Rail Bank.
270.7 Proposals.
270.9 Factors Governing Selection of Rights of Way to be Included in the Rail Bank.

AUTHORITY: Sec. 810, Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210, as amended, 90 Stat. 146 (49

U.S.C. 1653a); the Department of Transportation Act, 80 Stat. 931, Pub. L. 89-670 (49 U.S.C. 1651 et seq.); Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(u).

§ 270.1 Definitions.

As used in this part:

"Administrator" means the Federal Railroad Administrator or his or her delegate.

"Fossil fuel natural resources" means unextracted deposits of coal, natural gas, oil, oil shale, peat, and tar sands.

"4R Act" means the Railroad Revitalization and Regulatory Reform Act of 1976, 90 Stat. 31, Pub. L. 94-210.

"Rail bank" means the Administrator's interest in one or more rights-of-way.

"Right-of-way" means land and any rail trackage and other rail properties situated on the land which are needed to provide safe and efficient rail service to an area of the United States in which fossil fuel natural resources or agricultural production is located.

"3R Act" means the Regional Rail Reorganization Act of 1973, 45 U.S.C. 701 et seq.

§ 270.3 Establishment of Rail Bank.

There is established in the Federal Railroad Administration a rail bank consisting of the Administrator's property interests in railroad rights-of-way acquired to achieve the purposes of section 810 of the 4R Act. The Secretary may dispose of any or all interests in connection with property interests included in the rail bank if the Secretary finds that such a disposition would further his or her achievement of the purposes of section 810.

§ 270.5 Rights-of-Way Eligible to be Included in the Rail Bank.

A right-of-way is eligible to be included in the rail bank if:

(a) The Administrator determines that the right-of-way is necessary to provide service to an area of the United States in which fossil fuel natural resources or agricultural production is located; and

(b) (1) The right-of-way was in service on February 5, 1976 (the date of enactment of the 4R Act), and (i) the Interstate Commerce Commission has subsequently issued a certificate authorizing the abandonment of the right-of-way, or (ii) the right-of-way has been abandoned without Interstate Commerce Commission action as provided in section 304(b) of the 3R Act (45 U.S.C. 744(b)); or

(2) The right-of-way was listed in part III, section C of the Final System Plan issued by the United States Railway Association on July 26, 1975.

§ 270.7 Proposals.

(a) Any person, organization, or governmental entity may propose that the Administrator include a right-of-way in the rail bank.

(b) Proposals shall be submitted in writing to the Federal Railroad Administrator, United States Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590.

(c) A proposal may include any information which will assist the administrator to evaluate the right-of-way's potential ability to further the purpose of the Act.

§ 270.9 Factors Governing Selection of Rights-of-Way to be Included in the Rail Bank.

The Administrator's selection of right-of-way to be included in the rail bank is based on the following factors:

(a) The ability of the State to use funds provided under its Local Rail Service Assistance Program (section 402 of the 3R Act, 45 U.S.C. 762, or section 5(f)-(o) of the Department of Transportation Act, 49 U.S.C. 1654(f)-(o)) to obtain an interest in the right-of-way in order to preserve it for future rail services.

(b) The potential for future movement of fossil fuel natural resources or agricultural commodities on the right-of-way;

(c) The public interest which would be served by the inclusion of the right-of-way in the rail bank; and

(d) The cost and difficulty of obtaining an interest in the right-of-way.

Dated: March 31, 1978.

JOHN M. SULLIVAN,
Administrator.

[FR Doc. 78-9094 Filed 4-5-78; 8:45 am]

[7035-01]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Corrected S.O. No. 1313]

PART 1033—CAR SERVICE

Railroads Authorized To Forward Portions of Certain Multiple-Car [1] Shipments Transporting Less Than Minimum Quantities Specified by Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (corrected Service Order No. 1313).

SUMMARY: The tariffs of the railroads contain numerous provisions requiring the forwarding at one time, on one bill of lading of multiple car shipments of two or more cars. Because of severe shortages of plain boxcars, covered hopper cars, and gondola cars, many of the carriers are unable to furnish at one time all of the cars required to complete a multiple car shipment. Serious car delays and loss of car utilization result from the holding of a partial shipment while awaiting receipt of additional cars from the railroad. Service Order No. 1313 authorizes the immediate forwarding of portions of multiple car shipments not exceeding twenty-four cars without penalty to the shipper. The remaining portion of the multiple car shipment must be completed before subsequent shipments of the commodity or requiring the same kind of cars may be accepted.

DATES: Effective March 25, 1978. Expires May 31, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The order is printed in full below.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 24th day of March 1978.

The tariffs of various railroads contain minimum weight provisions which require that shipments of two or more cars be tendered at one time on one bill of lading for shipments of various commodities. Because of an extreme shortage of plain boxcars, covered hopper cars and gondola cars the carriers are unable to assemble the required number of cars without excessive car delay and loss of car utilization. This condition can be alleviated if carriers are authorized to forward the completed portions of multiple car shipments of these commodities promptly without awaiting the assembly of all of the cars required to complete the shipment.

It is the opinion of the Commission that an emergency exists; that there is good cause to authorize the immediate forwarding of the completed portions of certain multiple-car shipments; notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1313 Corrected Service Order No. 1313.

Railroads authorized to forward portions of certain multiple-car shipments transporting less than minimum quantities specified by tariffs—

(a) Application. (1) The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(2) This order shall apply to all freight cars listed in the Official Rail-

[1] Correction.

way Equipment Register, I.C.C.-R.E.R. No. 406, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", "XMI," "LO", "GA", "GB", "GD", "GH", or "GS".

(3) This order shall apply to any multiple-car shipment comprising two (2) and not more than twenty-four (24) cars described in paragraph (b)(2) of this section, required to be tendered to the carrier as a single shipment, on one bill of lading, at one time to comply with carrier's tariffs as to the number of cars to be shipped or the minimum quantity to be transported.

(4) The provisions of Service Orders Nos. 1234, 1280, and 1310, revisions thereof or amendments thereto, shall remain fully in effect.[1]

(5) All tariff provisions not specifically modified by this order shall remain in effect.

(b) *Partial shipments to be forwarded.* When the carrier is unable to furnish all of the cars of any of the kinds listed in paragraph (a)(2) of this section to enable completion of a multiple-car shipment as described in paragraph (a)(3) of this section on one bill of lading on one day, the carrier may accept instructions from shipper and immediately forward the completed portion of the shipment.

(c) *Completion of remaining portion.* The remaining portion of any partial shipment tendered to and forwarded by the carrier by authority of paragraph (b) of this section must be completed by the shipper before tender of any other shipments of the same commodities or requiring the use of the same kind of car is accepted by the carrier. The term "tendered" as used in this section means completion of loading by the shipper and receipt of instructions authorizing the immediate forwarding of the partial shipment.

(d) *Minimum weights.* The minimum weights applicable to each car in a multiple-car shipment and the minimum quantity required to be transported in a multiple-car shipment provided in the applicable tariffs shall remain fully in effect.

(e) *Billing to be endorsed.* The bills of lading and the waybills covering each car of a partial multiple-car shipment authorized by this order to be forwarded shall bear the following endorsement:

"Multiple-car shipment of (——) cars. Partial shipment of (——) cars forwarded authority ICC Corrected Service Order No. 1313. (——) additional cars to follow."

(f) *Effective date.* This order shall become effective at 12:01 a.m., March 25, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., May 31, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. 1 (10-17).)

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

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member Joel E. Burns not participating.

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

[FR Doc. 78-9038 Filed 4-5-78; 8:45 am]

[1] Correction.

[7035-01]

[S.O. No. 1314]

PART 1033—CAR SERVICE

St. Louis-San Francisco Railway Co. Authorized To Transport Shipments of Soybean Meal of Less Than 2,000 Tons

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Service Order No. 1314).

SUMMARY: Because of severe shortages of freight cars the St. Louis-San Francisco Railway is unable to furnish sufficient cars at one time to transport minimum weights of 2,000 tons of soybean meal between origins and destinations named in item 7420 series of Southern Ports Foreign Freight Committee Freight Tariff 1016-P, ICC No. 237. Service Order No. 1314 authorizes the SLSF to transport partial shipments of 2,000 tons of soybean meal between origins on its line and Gulf Ports listed in item 7420 of that tariff.

DATES: Effective 12:01 p.m., April 1, 1978. Expires 11:59 p.m., April 30, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The order is printed in full below.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 31st day of March 1978.

An acute shortage of covered hopper cars and boxcars for transporting shipments of grain, grain products, soybeans and soybean meal exists on the St. Louis-San Francisco Railway Co. (SLSF). That line participates in certain rates in Southern Ports Foreign Freight Committee Freight Tariff 1016-P, ICC No. 237, Item 7420 series, subject to a minimum weight of 2,000 tons per shipment, and requiring the assembly and use of between twenty-four (24) and forty (40) cars, dependent upon the capacity and kind of cars furnished. Because of severe shortages of freight cars on its line the SLSF is unable to furnish all of the cars required to transport shipments of this magnitude without excessive delay to a portion of the cars.

It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1314 Service Order No. 1314.

(a) *St. Louis-San Francisco Railway Co. authorized to transport shipments of soybean meal of less than 2,000 tons—Application.* (1) The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(2) This order shall apply to all freight cars listed in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 406, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", "XMI", or "LO".

(3) This order shall apply to any multiple-car shipment of not more than forty (40) cars, transporting 2,000 or more tons of soybean meal originating at stations on the St. Louis-San Francisco Railway Co. (SLSF) and destined to a Gulf port required by the provisions of Southern Ports Foreign Freight Committee Freight Tariff 1016-P, ICC No. 237, Item 7420 series, supplements thereto or re-issue thereof, to be tendered to the SLSF as a single shipment, at one time, on one bill of lading.

(4) The provisions of Service Orders Nos. 1234 and 1280, revisions thereof or amendments thereto, shall remain fully in effect.

(5) The provisions of Service Order No. 1312 shall not apply to partial shipments transported under authority of this order.

(6) All tariff provisions not specifically modified by this order shall remain in effect.

(b) *Partial shipments to be forwarded.* When the SLSF is unable to furnish all of the cars of any of the kinds listed in paragraph (a) (2) of this section to enable completion of a multiple-car shipment as described in paragraph (a) (3) of this section on one bill of lading on one day, the SLSF may accept instructions from shipper and immediately forward the completed portion of the shipment.

(c) *Completion of remaining portion.* The remaining portion of any partial shipment tendered to and forwarded by the SLSF by authority of paragraph (b) of this section must be completed by the shipper before tender of any other shipments of the same commodities or requiring the use of the same kind of car is accepted by the SLSF. The term "tendered" as used in this section means completion of loading by the shipper and receipt of instructions authorizing the immediate forwarding of the partial shipment.

(d) *Minimum weights.* The minimum weights applicable to each car in a multiple-car shipment and the minimum quantity required to be transported in a multiple-car shipment provided in the applicable tariffs shall remain fully in effect.

(e) *Billing to be endorsed.* The bills of lading and the waybills covering each car of a partial multiple-car shipment authorized by this order to be forwarded shall bear the following endorsement:

"Multiple-car shipment of (——) cars. Partial shipment of (——) cars forwarded authority ICC Service Order No. 1314. (——) additional cars to follow."

(f) *Effective date.* This order shall become effective at 12:01 a.m., April 1, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., April 30, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. 1 (10-17).)

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

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael.

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

[FR Doc. 78-9039 Filed 4-5-78; 8:45 am]

[7035-01]

[Revised Service Order No. 1301; Amdt. No. 1]

PART 1033—CAR SERVICE

Distribution of Grain Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 1, Revised Service Order No. 1301).

SUMMARY: There are serious shortages of 40-ft. narrow-door plain boxcars and of covered hoppers on the lines of the Burlington Northern and of the Chicago and North Western. Revised Service Order No. 1301 requires return of narrow-door, 40-ft., plain boxcars and of covered hoppers owned by these two railroads. Loading to stations on the lines of the Car owners is permitted. Amendment No. 1 extends Revised Service Order No. 1301 for an additional month.

DATES: Effective 11:59 p.m., March 31, 1978, expires 11:59 p.m., April 30, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The amendment is printed in full below.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 30th day of March 1978.

Upon further consideration of Revised Service Order No. 1301 (43 FR 12326), and good cause appearing therefor:

It is ordered, That: § 1033.1301, Revised Service Order No. 1301 *Distribution of grain cars,* is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., April 30, 1978, unless otherwise modified, changed or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 31, 1978.

(49 U.S.C. 1(10-17).)

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

By the Commission, Railroad Service Board members, Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.
Acting Secretary.

[FR Doc. 78-9034 Filed 4-5-78; 8:45 am]

[7035-01]

[Service Order No. 1298; Amdt. 1]

PART 1033—CAR SERVICE

Substitution of Maintenance of Way Ballast Cars for Gondola Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 1 to Service Order No. 1298).

SUMMARY: There is a severe shortage of gondola cars on the Burlington Northern for transporting shipments of pulpwood logs. At the same time because of adverse weather conditions there is a surplus of maintenance of way ballast cars not normally used for transporting commercial freight. Service Order No. 1298 authorizes the Burlington Northern to substitute maintenance of way ballast cars for gondola cars for transporting shipments of pulpwood logs. Amendment No. 1 extends this order for an additional month.

DATES: Effective 11:59 p.m., March 31, 1978, expires 11:59 p.m., April 30, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The amendment is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 30th day of March 1978.

Upon further consideration of Service Order No. 1298 (43 FR 3709), and good cause appearing therefor:

It is ordered, That: § 1033.1298, Service Order No. 1298, Substitution of maintenance of way ballast cars for gondola cars, is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., April 30, 1978, unless otherwise modi-

fied, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 31, 1978.

(49 U.S.C. 1 (10-17).)

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

By the Commission, Railroad Service Board members, Joel E. Burns, Robert S. Turkington, and John R. Michael.

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

[FR Doc. 78-9035 Filed 4-5-78; 8:45 am]

[7035-01]

[Twelfth Revised Service Order No. 1234; Amdt. No. 1]

PART 1033—CAR SERVICE

Distribution of Freight Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 1 to Twelfth Revised Service Order No. 1234).

SUMMARY: Because of a severe shortage of freight cars railroads are unable to furnish cars of the size required to transport the minimum quantities of freight specified by the tariffs without excessive delay to the intended shipment. Twelfth Revised Service Order No. 1234 authorizes the railroad to substitute sufficient smaller cars to transport all of the freight required to be shipped. Amendment No. 1 extends this order for six months.

DATES: Effective 11:59 p.m., March 31, 1978, expires September 30, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The amendment is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board held in Washington, D.C., on the 28th day of March 1978.

Upon further consideration of Twelfth Revised Service Order No. 1234 (42 FR 61597) and good cause appearing therefor:

It is ordered, That: § 1033.1234, Twelfth Revised Service Order No. 1234, distribution of freight cars, is amended by substituting the following paragraph (k) for paragraph (k) thereof:

(k) *Expiration date.* This order shall expire at 11:59 p.m., September 30, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 31, 1978.

(49 U.S.C. 1 (10-17).)

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

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member John R. Michael not participating.

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

[FR Doc. 78-9036 Filed 4-5-78; 8:45 am]

[7035-01]

[Service Order No. 1269; Amdt. No. 2]

PART 1033—CAR SERVICE

Missouri Pacific Railroad Co. Authorized to Operate Over Tracks of the Atchison, Topeka and Santa Fe Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 2 to Service Order No. 1269).

SUMMARY: The Missouri Pacific's line between Winfield, Kans., and Arkansas City, Kans., has been damaged by flooding and is inoperable. Service Order No. 1269 authorizes the Missouri Pacific to operate over parallel tracks of the Atchison, Topeka and Santa Fe between those points in order to provide continued railroad service to shippers served by the undamaged portions of this line. Amendment No. 2 extends this order for an additional six months.

DATES: Effective 11:59 p.m., March 31, 1978, expires 11:59 p.m., September 30, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Amendment is printed in full below.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 30th day of March 1978.

Upon further consideration of Service Order No. 1269 (42 FR 34883 and 54294) and good cause appearing therefor:

It is ordered, That: § 1033.1269, Service Order No. 1269, Missouri Pacific Railroad Co. authorized to operate over tracks of the Atchison, Topeka and Santa Fe Railway Co. is amended by substituting the following paragraph (c) for paragraph (c) thereof:

(c) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., September 30, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 31, 1978.

(49 U.S.C. 1(10-17).)

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

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

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

[FR Doc. 78-9037 Filed 4-5-78; 8:45 am]

[4310-55]

Title 50—Wildlife and Fisheries

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

PART 26—PUBLIC ENTRY AND USE

Salinas Lagoon National Wildlife Refuge, in California

AGENCY: U.S. Fish and Wildlife Service, Sacramento Area Office.

ACTION: Special regulations.

SUMMARY: These special regulations describe the conditions under which the public can enter and use Salinas Lagoon National Wildlife Refuge in California.

EFFECTIVE DATE: May 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Refuge Manager, San Francisco Bay National Wildlife Refuge, 3849 Peralta Boulevard, Fremont, Calif. 94536, telephone 415-792-0222.

GENERAL CONDITIONS

Public entry and use on portions of the Salinas Lagoon National Wildlife Refuge shall be in accordance with applicable State and Federal regulations, subject to additional special regulations and conditions as indicated. Portions of the refuge which are open for recreation are designated by signs and/or delineated on a map. Special conditions applying to the refuge is listed on the reverse side of the map available at the headquarters San Francisco Bay National Wildlife Refuge, Fremont, or at the office of California Department of Fish and Game, 2201 Garden Road, Monterey, Calif. 93940. No vehicle travel is permitted except in designated parking lot. Dogs are not permitted at any time, with the following exceptions: Dogs under strict control and actively employed for hunting are permitted during open hunting season. Dogs under strict control by their handlers may be trained for waterfowl or upland game. All training must be in accordance with State Fish and Game codes and regulations. No training trials may be conducted within 200 yards of the Salinas River.

§ 26.34 Special regulations concerning public access, use and recreation for individual national wildlife refuges.

(1) This area is open to the public from one hour prior to sunrise to one hour after sunset.

(2) Picnicking is allowed on beach and other designated areas only.

(3) Firearms are not permitted except during established hunting seasons by licensed hunters while engaged in actual hunting.

(4) No horses will be allowed on any refuge area.

NOTE.—The Fish and Wildlife Service 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 A-107.

WILLIAM D. SWEENEY,
Area Manager,
U.S. Fish and Wildlife Service.

[FR Doc. 78-9099 Filed 4-5-78; 8:45 am]

[1505-01]

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 230—WHALING

Taking of Bowhead Whales by Indians, Aleuts, or Eskimos for Subsistence Purposes

Correction

In FR Doc. 78-8736 appearing at page 13883 in the issue for Monday, April 3, 1978, in the third column of page 13885, the last sentence of the last paragraph now reading "Consequently, these regulations are effective April 13, 1978" should have read "Consequently, these regulations are effective April 3, 1978."

proposed rules

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

[3410-02]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1036]

[Docket No. AO-179-A43]

MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the present order provisions based on industry proposals considered at a public hearing held October 12-14, 1977. The major proposed amendments would change the method of paying producers and cooperative associations, lower the pool supply plant shipping requirements, provide handlers more flexibility in moving milk directly from farms to manufacturing plants and expand, to a limited extent, the marketing area. The proposed amendments are necessary to reflect current marketing conditions and to insure orderly marketing in the area.

DATE: Comments are due on or before April 26, 1978.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Maurice M. Martin, Marketing specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing, issued September 20, 1977, published September 26, 1977 (42 FR 48886). Notice of extension of time for filing briefs, issued November 25, 1977, published November 30, 1977 (42 FR 60927).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area, and the opportunity to file written exceptions thereto. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washinton, D.C. 20250, by the 20th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Cleveland, Ohio, on October 12-14, 1977, pursuant to notice thereof.

The material issues on the record of the hearing relate to:

1. Expansion of the marketing area.
2. Pooling standards for a supply plant.
3. Diversion of producer milk.
4. Payments to producers and cooperative associations.
5. Administrative provisions.
(a) Administrative assessment.
(b) Late-payment charges.
(c) Miscellaneous payment provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Expansion of the marketing area.* The Eastern Ohio-Western Pennsylvania marketing area should be expanded to include the remaining unregulated areas of Ashland, Lorain, and Medina Counties in Ohio.

The addition of this unregulated territory to the marketing area was proposed by four proprietary handlers regulated under Order 36 and one such handler regulated under the neighboring Ohio Valley Order No. 33. However, their proposal to include also Erie and Huron Counties and certain townships in Ottawa and Sandusky Counties in Ohio (hereinafter referred to as the four-county area) is denied.

The entire area proposed by handlers to be added to the Order 36 marketing area, if adopted, would extend the boundary of the present Order 36 marketing area westward to include all the unregulated territory, except for four townships in Ottawa County and three townships in Sandusky County that now separates the northwest boundary of the Order 36 marketing area from the Order 33 marketing area. The proposed new territory in Erie and Ottawa Counties, and Brownhelm Township in Lorain County, are bounded on the north by Lake Erie. According to the 1970 Census of Population the population of the proposed area was about 236,000, less than 3 percent of the population of the Order 36 marketing area. The principal cities in the proposed expanded area are Sandusky, Fremont, and Norwalk.

Essentialy, the thrust of proponents' proposal was to bring under Federal regulation a distributing plant at Sandusky. Proponents claimed that full regulation of this plant is necessary to assure competitive equity with presently regulated handlers in over-lapping fluid milk sales areas. They contended that this distributor has a competitive advantage relative to regulated handlers since the cost of his Class I milk is not the order Class I price but instead is approximately the average of the Order 33 and Order 36 uniform prices to producers.

A witness for proponent handlers testified about his marketing experience in the proposed area at the time that he was the manager of another unregulated fluid milk distributing plant located in Sandusky. This plant's fluid operations ceased shortly after it was purchased in April 1977 by an Akron, Ohio, handler (one of the proponents) since the plant's fluid milk operations were transferred to the Akron pool plant facilities. The witness alleged that in its unregulated status the plant operation had a raw milk product cost advantage over regulated handlers in overlapping areas of distribution. He reasoned that since this operation was then supplied in large part from the same dairy farmer cooperative association that is supplying the present unregulated plant in Sandusky, the latter plant must be paying the same prices for milk and thus enjoying the same buying advantage.

A representative of the present Sandusky distributor opposed the proposed area extension only as it applies to the territory in Erie, Huron, Ottawa, and Sandusky Counties. The Sandusky distributor's fluid milk sales are confined to these four counties and his competition with regulated handlers is only within such area. A cooperative association, the principal supplier of the Sandusky distributor, on behalf of its 18 members, and 2 nonmembers also opposed the area expansion into the four-county area. Opponents took no position with respect to extending the marketing area into the Ashland, Lorain, and Medina County areas.

Witnesses for the opposition contended that disorderly marketing conditions do not exist in the four-county area proposed to be added. Regulated handlers, the witness for the Sandusky distributor claimed, have maintained their proportion of sales in the four-county area. An opponents' witness cited prior hearings at which the regulation of the four-county area was considered. It was his contention that the basis of the Department's denial of area extension in such proceedings was equally applicable to the current proceeding since marketing conditions have not changed in the intervening time.

As indicated, all territory in the remaining unregulated areas of Ashland, Lorain, and Medina Counties should be included in the marketing area. There was no opposition to the inclusion of this territory in the marketing area. A substantial portion of these three counties is now a part of the defined Order 36 marketing area. This area is not densely populated, with a population of about 38 thousand according to the 1970 Census of Population. Oberlin is the largest populated center in the area (8,800 in 1970).

All Class I sales made in this unregulated territory are by handlers subject to classified pricing under an order. Although Class I sales are being made in some of this area by Order 33 handlers, the record evidence indicates that the total unregulated territory in these three counties is essentially an integral part of the sales area of Order 36 handlers.

It is reasonable in this circumstance to "block in" the marketing area by including the unregulated portions of Ashland, Lorain, and Medina Counties since all fluid milk sales in the area are by regulated handlers. Providing for such a contiguous marketing area will remove the necessity of handlers maintaining separate records of out-of-area sales for these particular areas. Such records are necessary in determining if the plant has met the minimum in-area route disposition requirement of the order.

For pricing purposes, the marketing area is divided into four zones. All of Ashland County that is encompassed in the present marketing area is now included in Zone 1. The conditions supporting this arrangement are equally applicable to the additional area of Ashland County proposed to be regulated and thus it is appropriate to include this area in Zone 1. The areas of Lorain and Medina Counties proposed to be regulated are adjacent to those parts of the marketing area included in Zone 2. Accordingly, it is reasonable to include these areas in Zone 2.

The addition of this territory and the prices applicable thereto will have no substantial impact upon handlers presently regulated by an order. There are currently no handlers located in this territory that would be brought under full or partial regulation by such change. Should a new milk plant begin operations in this added territory, the price relationships herein established will be in alignment with other regulated plants on the market with which they may compete in the procurement and sale of fluid milk and milk products.

On the basis of this record, marketing conditions do not warrant the inclusion in the marketing area of the proposed territory in the four Ohio counties of Erie, Huron, Ottawa, and Sandusky.

As indicated previously, the purpose of proponent handlers' proposal was to bring under regulation an unregulated distributing plant at Sandusky whose fluid distribution is confined to the four-county area. The Sandusky operation is relatively small. In 1976, for example, the plant received 9.7 million pounds of milk from dairy farmers. This volume represented less than 0.3 percent of the total volume of producer milk pooled in 1976 under the order.

None of the four counties is heavily populated. In 1970, the total population of the four-county area was 198,000, with Sandusky (33,000), in Erie County, being the only city of any appreciable size. Because of its proximity to Lake Erie, the Sandusky area is a resort area. This results in some increase in demand during the summer tourist season of June, July, and August. Nevertheless, it is reasonable to conclude that this four-county area does not represent a major sales area for regulated handlers.

At the time of the hearing, fluid milk was distributed in the four-county area by five Eastern Ohio-Western Pennsylvania regulated handlers, five Ohio Valley regulated handlers, one Southern Michigan regulated handler and by the Sandusky unregulated handler. However, there is little indication from the record of the extent of distribution or the sales pattern in the area by handlers who are regulated by the respective orders. The number of regulated handlers distributing in the four-county area, alone, is not indicative that they have the majority of sales in the area.

Testimony and exhibits introduced at the hearing indicate that the Sandusky milk dealer receives his supply of milk from about 20 dairy farmers. Of these, 18 belong to a cooperative association that delivers milk only to this dealer. The dealer also relies to some extent on producer milk pooled under the order to supplement his fluid needs in August and September to meet the additional demands of school openings. The spokesman for the Sandusky milk dealer testified that the prices paid for these supplemental supplies are the applicable Order 36 Class I prices plus any prevailing over-order charges.

A witness for the cooperative association testified that his members receive a blended price from the Sandusky dealer that is based on an average of the applicable Order 33 and Order 36 uniform producer prices plus any prevailing over-order payments. The Sandusky plant has a relatively high Class I utilization of milk. If fully regulated under the Eastern Ohio-Western Pennsylvania order, the applicable Class I price at the Sandusky plant would be the Zone 3 Class I price less a 9-cent location adjustment. For the years 1975 and 1976, the prices reported to be paid to dairy farmers at the Sandusky plant averaged 21 cents and 57 cents, respectively, less than the order's Zone 3 Class I prices, adjusted for location of the Sandusky plant.

It cannot be concluded from the record evidence, however, that this lower cost for Class I milk at the Sandusky plant has had any substantial adverse effect on regulated handlers competing for Class I sales in the four-county area. There is no indication, for example, that regulated handlers are experiencing disorderliness in the resale market, such as in terms of the unregulated distributor expanding his sales at the expense of regulated handlers, or selling milk to consumers at significantly lower retail prices. The record evidence does not show that the unregulated distributor does, in fact, have competitive advantage in the procurement and sale of milk in the four-county area to a degree that warrants his full regulation.

The fact that one of the proponent handlers has recently purchased the entire operations of an unregulated plant in Sandusky and in turn, transferred such plant's fuild milk operations to its regulated plant at Akron, Ohio, is not a compelling consideration in deciding the marketing area issue. The witness for proponents claimed that if the remaining unregulated Sandusky plant does not become fully regulated by virtue of their area expansion proposal, the Akron han-

dler may be forced to resume fluid milk operations at its Sandusky plant solely for the purpose of meeting the competition of the other Sandusky unregulated plant. The likelihood of this happening, of course, is speculative. Presumably, the Akron regulated handler was fully aware of the competitive situation existing in the four-county area at the time that he purchased and changed the operations of the Sandusky unregulated plant.

In view of the foregoing considerations, there appears to be no compelling evidence of market disorder of a magnitude requiring the regulation of the proposed territory. The proposal to extend the marketing area to include the four-county area, therfore, is denied.

2. *Pooling standards for a supply plant.* The minimum percentage of total receipts of approved milk from dairy farmers that a supply plant must move, either by transfer or diversion, to pool distributing plants to qualify as a pool plant should be reduced to 40 percent for the months of September, October, and November and 30 percent for all other months.

Under the present terms of the order, a supply plant qualifies for pooling if at least 50 percent of its receipts of milk from dairy farmers is moved to pool distributing plants during each of the months of September, October, and November and 40 percent in all other months. A supply plant that is a pool plant in each month of September through February is accorded automatic pooling status in the subsequent months of March through August unless nonpool plant status is requested.

The change in shipping percentages for a supply plant that is adopted in this decision was proposed by the principal cooperative in the market. Proponent cooperative operates two of the seven pool supply plants that currently serve the market. Two of the other supply plants are operated by another cooperative association, and three are operated by proprietary handlers.

Proponent cooperative association indicated that its proposal to reduce a pool supply plant's shipping requirement was prompted by problems the cooperative encountered during the 1976-77 and the 1977-78 qualifying periods in making the required shipments to pool distributing plants. The witness for the proponent cooperative testified that in order to maintain pool status for both of the cooperative's supply plants it was forced to make unnecessary and uneconomic movements of milk. He indicated that prior to 1976 the present shipping requirements appeared to be appropriate under marketing conditions existing at that time.

Basically, proponent testified that its present pooling problem stems from two recent developments that have occurred in the market which were not prevalent when the present shipping requirements for pooling supply plants were established, namely, (1) changes in the relationship of producer milk supplies to Class I sales, and (2) changes in the daily demand for supply plant milk as a result of adjustments in distributing plant operations. Proponent contended that shipping requirements for pooling a supply plant "should not be so high that milk regularly associated with the market can remain in the pool only if uneconomical movements of milk are made for the purpose of qualifying the supply plants."

It is essential that the order contain minimum shipping requirements that reflect the fluid milk needs of the market. In this connection, the minimum shipping requirements should assure that a supply plant associated with the market will make milk available to distributing plants at the times and in the quantities needed. However, a supply plant regularly serving the market should not be forced to make uneconomic shipments of milk to qualify such plant when the milk is not needed.

Total producer milk pooled in the Eastern Ohio-Western Pennsylvania market increased from 3,331 million pounds in 1975 to 3,494 million pounds in 1976, an increase of five percent. Beginning in November 1975, total producer milk on the market increased each month over the same month of the previous year through August 1977, the latest month for which data were available at the time of the hearing. Indications are that this trend in producer receipts will continue.

Conversely, total Class I disposition by pool plants in the market has declined. In 1976, such disposition was one percent below 1975. For the first eight months of 1977, total Class I disposition at pool plants was 1.9 percent below the same 1976 period. Also, for the September-February 1976-77 period total Class I disposition was 1.9 percent below the September-February 1975-76 period. These are the six months in which a supply plant has to qualify in order to continue in automatic pool status for the following six months.

Distributing plants in this market generally tailor their receipts to their Class I disposition. With a lower level of Class I disposition distributing plants have needed a lesser volume of milk from supply plants. Since distributing plants in the market now usually operate only four or five days per week, with heavy bottling on just certain days, the volume of supply plant milk needed daily varies widely during the week. The proponent's spokesman indicated that on a peak bottling day during the week practically all its supply plant milk is needed at distributing plants to fulfill their requirements. However, on other days of the week, especially on weekends and holidays, very little, if any, supply plant milk is needed at distributing plants. Supply plants, therefore, generally, must handle larger reserve supplies during the week then would be the case if the demand by distributors were more constant.

These developments coupled with the increasing quantity of producer milk on the market are significant factors that have adversely affected the ability of some pool supply plants to meet the present shipping requirements. These are factors that have had an adverse effect on the ability of the proponent cooperative to continue to pool its two supply plants without making unnecessary and uneconomical movements of milk to the market.

Shipping requirements for a supply plant must be changed as conditions in the market change. Under the present conditions existing in this market, it would not be in the interest of orderly marketing to continue the present pooling standards for supply plants since they do not accommodate the continued pool status for some supply plants and producers who have been and continue to be regular suppliers of the fluid milk needs of pool distributing plants.

In view of current supply-demand conditions and in recognition of the additional reserve milk supplies that some supply plants must handle in supplying the current fluid needs of distributing plants in this market, a reduction of 10 percentage points (from 50 to 40 percent for the months of September-November and from 40 to 30 percent for all other months) appears reasonable and approriate. This lower shipping standard should be adequate to assure that milk associated with supply plants will continue to be available to distributing plants when needed. Additionally, it should reduce to a minimum uneconomic movements of milk which otherwise might be made solely to maintain pool status for a supply plant.

Two proprietary handlers who operate distributing plants in the Pittsburgh segment of the marketing area testified in opposition to the proposal on the basis that it would provide the proponent cooperative with greater control over the market's producer milk supplies with consequences adverse to their interests. Essentially, the proprietary handlers' concern centered on the potential adverse effect that reducing shipping requirements for a supply plant would have on the proponent cooperative's over-order pricing policy. Opponents contended that since under the proposal less milk would have to be moved to distributing plants to qualify a supply plant for

pooling, this would encourage the proponent cooperative to charge higher over-order prices for milk. This, they asserted, would have the utlimate effect of reducing a proprietary handler's ability to maintain a milk supply from nonmember producers because the cooperative would be in a position to pay a higher price to its producer members.

Although they did not testify at the hearing on the supply plant pooling proposal, a trade association of handlers located in Western Pennsylvania and an individual handler, in their post-hearing briefs, essentially reiterated opponents' position.

The record does not provide any foundation for the claim that a reduction in shipping requirements would result in higher over-order charges by cooperatives and procurement problems for proprietary handlers. As indicated, producer receipts have increased and Class I demand has declined. Under these circumstances, the limited reduction in shipping standards adopted herein is not likely to provide cooperatives with any significantly greater flexibility than now in the sale of their milk. If the shipping requirements were lowered substantially, cooperatives could possibly exercise somewhat greater bargaining power than presently. This is not to say, however, that any additional over-order prices obtainable would necessarily be excessive relative to the services being provided by cooperatives. In any case, the change in pooling standards is relatively limited and should not have any major impact on the procurement situation for proprietary handlers.

A cooperative association that did not testify at the hearing, in its post-hearing brief, opposed the proposal on the basis that its effect would be to facilitate the pooling of additional milk on the market with the consequences of reducing producer returns. Similar to other opponents, it also claimed that liberalizing the pool supply plant provisions would enhance proponent cooperative's ability to attract additional members.

As indicated, the change in pooling standards adopted herein is relatively limited in terms of the current marketing situation. The opportunity to pool additional milk supplies because of the change thus should be minimal.

3. *Diversion of producer milk*—The provisions relating to the diversion of milk from pool plants to nonpool plants should be revised as follows:

(a) The limits on the quantities of milk that may be diverted to nonpool plants during certain months should be based either on a percentage of total producer deliveries to pool plants or on the number of days' production of an individual producer that is actually delivered to a pool plant.

(b) Eliminate August as a month in which the limit on diversions to nonpool plants applies.

The order now limits a producer's production that may be diverted from pool plants to nonpool plants during the months of August through March to not more than his production that is physically received at pool plants. Determining diversion limitations on this basis should be continued but with the alternative of basing them on a percentage of total producer receipts, as adopted herein.

The adopted alternative diversion limitations should apply to both a cooperative association and a proprietary handler. In this connection, milk diverted by a cooperative from pool plants to nonpool plants during each of the months of September-March would be limited to a quantity not exceeding 40 percent of the total producer milk that the cooperative causes to be delivered to all pool plants during the month. Similarly, a proprietary operator of a pool plant would be permitted to divert to nonpool plants up to 40 percent of the total producer milk physically received at his plant. However, this should be exclusive of milk received from producers whose milk a cooperative is diverting on a percentage basis.

The modification of the existing diversion provisions was proposed by a cooperative association with member-producers on the market. The purpose of the proposal, as indicated by proponent, is to permit a diverting handler a choice in achieving economies in diverting reserve milk supplies to nonpool plants. The proponent contends that its proposal "would provide for increased efficiency and improved economies in the marketing of milk by eliminating unnecessary handling, pumping and hauling of milk." Proponent testified that basing diversion limitations only on the number of delivery days of each producer has caused the cooperative to move more milk to pool plants than is needed sorely to maintan producer status for some of its members. It was pointed out that this causes the cooperative association to incur additional hauling costs in disposing of reserve milk supplies during the months in which diversion limitations apply. In proponent's view, the proposal would not encourage the pooling of greater quantities of producer milk under the order than what is permitted now. There was no opposition to the proposal expressed either at the hearing or in post-hearing briefs.

Diversion provisions are intended to facilitate the orderly and efficient disposition of milk not needed at pool plants for fluid purposes. When milk is not needed at pool plants, such as on weekends, holidays and during periods of seasonally high production, the direct movement of milk from a producer's farm to a nonpool plant for manufacturing avoids the unnecessary expense of handling incurred if the milk must be moved first to the pool plant where normally received and then transferred to the nonpool plant. In this connection, it is usually more practicable and efficient to divert any necessary amounts from those farms that are nearest to a nonpool plant to which milk may be diverted.

Under the present diversion provisions, which limit the amount of an individual producer's milk that may be diverted during the diversion limitation months, handlers cannot always divert milk of producers in the most efficient manner. This is because on some days distant milk must be delivered to a pool plant in order to qualify for pooling, while at the same time nearby milk is diverted to a more distant manufacturing plant. Allowing proprietary handlers and cooperatives the option of basing diversion limitations on a percentage basis of total producer receipts will permit handlers to select the most economical and flexible basis for determining their allowable diversions during the month.

In terms of the total market, the percentage diversion limit herein adopted will not increase the amount of milk which may be diverted during the months in which diversion limitations apply. In fact, a greater quantity of milk can be diverted under the present method (which is herein retained) of basing diversion limitations on individual producer's milk deliveries.

The spokesman for one of the cooperatives in the market testified that the association was not opposed to the proposed change if the order provides a reasonable safeguard assuring that an individual producer's milk diverted on a percentage basis is actualy associated with the market as evidenced by deliveries to pool plants. In this connection, the proponent cooperative, in its post-hearing brief, recommended that a producer be required to make one delivery to a pool plant during each month except August, as a condition for qualifying any of his milk in the same month for diversion. In its brief, another cooperative association with member-producers on the market suggested that for the milk of a producer to be eligible for diversion on a percentage diversion limitation basis "that the milk be received at a pool plant on at least one day during the first month of pooling and also that it be received at a pool plant on one day during the first month of the limited diversion period (September) on an annual basis thereafter."

Only that milk from dairy farmers genuinely associated with the market, as evidenced by their deliveries to pool plants, should be eligible for diversion to nonpool plants when producer milk

is diverted on a percentage basis. A requirement of substantial deliveries of milk of an individual producer in establishing his association with the market, however, would be a deterrent to the efficient handling of that milk in excess of a handler's immediate fluid milk needs. Accordingly, the order should require that milk of a dairy farmer by physicaly received at a pool plant before any of his milk is eligible to be diverted as producer milk. Additionally, the order should provide that a producer be required to deliver to pool plants at least once in each month of September-November to qualify his deliveries for diversion during such months. Under current marketing conditions, these requirements are sufficient to establish a producer's continuing association with the market and still permit the necessary flexibility in diverting milk not needed for fluid use.

As already indicated, the months during which a handler may divert producer milk without limit to nonpool plants should be extended from the period April-July to include August. This change was proposed by the cooperative association which recommended the alternative percentage basis method in computing diversion limitations. Proponent cooperative testified August is now a month of comparatively low Class I utilization because producer deliveries are relatively high in relation to Class I sales. Thus, the cooperative maintained that the same unlimited diversion privileges should be extended to this month as now apply for other months of seasonally low Class I utilization. There was no opposition to this proposal.

For the years 1975, 1976 and 1977, the Class I utilization of producer milk in August was 62 percent, 56 percent and 57 percent, respectively. These percentages for August are only slightly higher than for the seasonally high milk production months of April-July when diversions are presently not limited. In fact, Class I utilization in August 1975 and 1976 was lower than in April 1975 and 1976 (an unlimited diversion month). Consequently, there are substantial quantities of reserve milk on the market in August that must be moved to manufaturing plants. In such circumstance, continuance of diversion limitations for August could adversely affect the economic handling of milk in excess of fluid requirements. Accordingly, the order should be amended to provide for unlimited diversion of producer milk during the months of April through August.

4. *Payments to producers.* The order should provide that handlers pay all order obligations for milk to the market administrator who, in turn, would distribute such money, in terms of the uniform price, to producers, cooperative associations and handlers who elect to pay their nonmember producers.

Under the present payment plan, producers and cooperative associations are paid by the handlers receiving their milk. It is necessary under this arrangement, however, that part of the money due producers from handlers with higher than market-average Class I utilization be used in paying producers supplying other handlers with less than market-average Class I utilization. This exchange of money between handlers is accomplished through a "producer-settlement fund" operated by the market administrator. Handlers with higher than market-average Class I utilization pay any excess of the value of their producer milk over its value at the uniform price into this fund. Other handlers receive from the fund payments that are included in the uniform price they pay to their producers.

Three cooperative associations representing a substantial number of producers supplying the fluid milk market proposed that the market administrator collect from handlers all order payments due producers. Under the cooperatives' proposal, each handler would make partial payments to the market administrator by the third day prior to the end of the month for milk received during the first 15 days of the month. The payment rate would be the Class III price for the preceding month. The remainder of the handler's obligation for milk received during the month would be paid to the market administrator by the 16th day of the following month.

The cooperatives' proposal provides for the same payment dates to producers and cooperatives as now established under the order. Following the receipt of the partial payments by handlers, the market administrator would pay producers such monies by the last day of the month. The market administrator would make final payments to producers by the 18th day after the end of the month. In those cases where a cooperative is collecting the payments for milk of its members, the proposal would require partial and final payments by the market administrator one day prior to the date payments are due individual producers.

This payment schedule under the cooperatives' proposal is based on the filing of handler reports of receipts and utilization by the 8th day of the month and the announcement of the uniform price by the 13th day.

Under the cooperatives' proposal, recognition would be given to the desire of handlers to pay producers (basically nonmembers) supplying them with milk. As proposed, any handler not delinquent with respect to any of his reporting or payment obligations who wished to pay his own producers would pay his full obligation to the market administrator. Upon receipt of the proper payment, the market administrator then would transfer funds to the handler so that he could pay his producers.

Proponents urged the adoption of their proposed payment arrangement on the basis that this would provide handlers with a stronger incentive for making prompt payment of their order obligations. Proponents pointed out that payments by handlers to a considerable extent have not been on time and in some cases, they allege, handlers have paid their nonmenber producers before paying cooperatives.

Proponents also contend that late payments by certain handlers result in an inequitable situation for those handlers making timely payments. This, they state, is because the delinquent payers are using money due producers to overcome cash flow problems while the prompt payers who may have similar problems must borrow money or use their own capital. A witness for one of the proponent cooperatives pointed out that the cooperative's experience in doing business under the neighboring Ohio Valley order, which has a similar payment arrangement, has been substantially better from a standpoint of timely handler payments of order obligations than its experience under Order 36. It is the position of proponents, therefore, that producers on the Order 36 market will be paid on a more timely basis if all their monies are channeled through the market administrator in lieu of the present payment system whereby handlers pay producers directly.

Opponents of the arrangement whereby producer payments would be routed through the market administrator cited the alleged adverse impact that would be placed on their cash flow by having to make full payment for their order obligations two days earlier. Other objections were that the proposed payment arrangements (1) would use the market administrator as a collection agent, a task which they claimed proponent cooperatives should be doing; (2) might not be authorized by the Act; (3) would add to the costs of administering the order, which they claimed could result in higher administrative assessments upon handlers; (4) would interfere with normal handler-producer relationships; and (5) would impose an additional administrative burden upon handlers with doubtful benefits accruing to producers.

The record evidence indicates that the incidence of late payments by pool handlers to cooperative associations is a serious problem in this market. Data submitted into evidence by the market administrator's office demonstrated the severity of the problem. For example, during the 19-month period of

January 1976 through July 1977, the number of total payments made by pool handlers to cooperative associations was 2,110. For this period, only 1,151 payments or 55 percent were received by cooperatives by the 21st of the month, the fifth day after such payments should have been mailed. Under the present order, pool handlers' monthly final obligations to cooperatives are due by the 16th day (postmarked, if mailed) of the following month. On a monthly basis, the percentage of payments received by cooperatives by the 21st ranged from 46 percent to 61 percent.

In terms of money owed to cooperatives, the payment delinquency experienced for this period was little better. For the same 19-month period of January 1976 through July 1977, the total amounts due cooperatives from pool handlers for milk sales amounted to 231.4 million dollars of which 83.6 million dollars, or about 36 percent, were not received by the co- operatives until six or more days after the date when such payments are due under the order.

If the order is to serve its intended purpose of promoting orderly marketing, it is essential that handlers pay producers and cooperative associations on a timely basis. Under the customary arrangements of producers being paid twice a month, handlers have the use of producer milk for considerable periods of time before any payments for such milk are due. Producers should not be expected to wait beyond the scheduled times for their milk payments. Delayed payments not only foster uncertainty and discontent among producers but also place them in a difficult position with respect to meeting their own financial obligations on a timely basis.

From the standpoint of handlers, also, it is necessary that all order obligations be paid on time. Otherwise, handlers who are in compliance would be at a competitive disadvantage with delinquent handlers who are using monies due producers as a free source of funds for operating purposes.

For these reasons, the order should be structured, as proposed, to encourage prompt payments by handlers. There are several aspects of the payment method adopted herein that will prodive producers with greater assurance that they will be paid for their milk deliveries on a timely basis.

Under a plan whereby all payments by handlers are made to the market administrator who in turn pays producers, the fact of payment to producers is a matter of the market administrator's immediate knowledge. When handlers pay producers directly, a failure to make full payment to producers by the dates specified in the order usually does not become known to the market administrator at the time of noncompliance. Some time may elapse before normal audit procedures reveal any payment irregularities.

Also, the payment plan adopted herein, similar to payment plans in effect in several other orders, tends to be self-policing. Payment would not be made by the market administrator to producers delivering milk to a handler who fails to pay his obligation to the market administrator. Thus, such producers would be immediately aware of when the handler receiving their milk fails to pay his pool obligation. Presently, a handler may pay his producers the blend price and at the same time fail to pay an amount due the producer-settlement fund. In the absence of any knowledge of the handler's financial difficulties, the producer presumably would continue to ship milk to the handler. Only when the handler's financial problems become so great as to result in nonpayment to his producers would the producers realize the possible need for seeking a different outlet for their milk. Under the adopted payment procedure, the producers would be aware of the handler's financial difficulty in the first month of nonpayment. They then would be able to consider on a more timely basis the possible need for making other arrangements for the sale of their milk before their loss as a result of nonpayment seriously jeopardizes their financial status.

In addition, the adopted payment procedure should reduce current pressures on cooperative associations to grant credit to handlers who may be delinquent in payment for milk received from member producers. The tendency for extension of credit by cooperatives should be minimized when handlers are required to make payments for producer milk directly to the market administrator rather than to the cooperative.

Recognition should be given under this payment arrangement to the desire of handlers to pay the producers supplying them with milk. Such payments should be permitted with respect to those producers for whom a cooperative is not collecting payments. For all practical purposes, this generally would include only those producers who are not members of a cooperative association.

As provided herein, the handler would be required to pay his full obligation for milk to the market administrator in the same manner as other handlers who are not paying producers directly. This would be so in the case of both the partial and final payments. Upon receipt of the proper payment, the market administrator then would transfer sufficient money to the handler so that he could pay his producers.

A handler who expressed the desire to continue his close relationship with his producers and pay them himself contended that there was no need to transfer first to the market administrator the money that he pays his producers.

A basic purpose of changing to the payment method adopted herein is the encouragement of timely payments by handlers. To effectively implement this concept, it is desirable that the handlers purchasing milk from nonmembers as well as those obtaining milk from a cooperative pay their order obligations to the market administrator by the dates prescribed herein. Through this means, the market administrator will be immediately aware in the case of all handlers of a handler's inability to meet his order obligation.

Any handler who the market administrator determines is delinquent with respect to any payment obligation under the order should not be eligible to receive money from the market administrator for payment to producers. Any transfer of money by the market administrator to a handler in this circumstance would remove much of the incentive for a handler to consistently comply with the order's payment requirements. So that there might be a reasonable demonstration of compliance with the order, a delinquent handler should not be eligible to pay his producers until he has met the prescribed payment obligations for three consecutive months.

In addition to the payment requirement, proponent cooperatives proposed that a handler who is also delinquent in meeting the reporting requirements under the order be ineligible to receive money from the market administrator for payment to producers. Although it is essential that handlers comply with all reporting requirements of the order, it was not established that the adoption of this additional requirement is a necessary condition to assure that payments to producers are made when due by a handler who elects to pay his producers directly. Any problems of reporting compliance should be dealt with through some other means.

Handlers at the hearing and in post hearing briefs opposed the proposed three-month requirement. They pointed out that late payments to producers do occur occasionally because of human error. It was their contention that the three-month requirement classified such human errors the same as a deliberate late payment or nonpayment by a handler and penalizes the handler to the same degree in either case.

It is quite possible that a late payment to producers by a handler may occur unintentionally. There is no practical way from an enforcement standpoint, however, to distinguish between intentional and unintentional

late payments. Even if there were such a way, the three-month requirement appears to be reasonable under the marketing circumstances indicated on the record. As stated earlier, the purpose of the adopted producer payment method is to provide producers with greater assurance that they will be paid for their milk deliveries on a timely basis. It must be recognized that under this new payment method, permitting a handler to pay his nonmember producers is to a certain extent no change from the present payment method used in the market. If the order is to allow handlers the option of paying nonmembers, it is necessary that there be some incentive to pay their producers on a timely basis. In the absence of this incentive, such as losing their eligibility to pay producers for a three-month period, handlers may tend to become lax in their payment procedure.

Under the adopted payment procedure, it is imperative that the payments received by the market administrator from handlers represent sound money. This is necessary, of course, under the present payment arrangement. However, because the new procedure will result in substantially greater amounts of money being transferred in and out of the producer-settlement fund, receipt of a bad check of a substantial sum could render such fund insolvent.

With the payment schedule adopted herein, the market administrator will need to make payments to cooperatives and certain handlers the day after the payments are due to him from all handlers. Such payments will have to be made with the belief that the checks received from handlers and deposited in the producer-settlement fund are, in fact, good. Time will not permit the clearance of such checks through the banks prior to the withdrawal of money from the producer-settlement fund. The need for the market administrator to receive only sound money is thus obvious.

The attached order does not prescribe the specific means by which handlers shall make payment to the market administrator. The need for such specificity should be based on actual experience in the market. As long as handlers make full payment by the prescribed payment dates and their checks are good, there is no problem. However, if the market administrator, because of prior experience or for other reasons, does not have reasonable assurance that payments tendered would represent sound money, it is necessary that he have the administrative discretion to prescribe the means of acceptable payment.

Under the terms of the order, the market administrator has the authority to make rules and regulations to effectuate the terms and provisions of the order. Should there be an urgent need for greater specificity with respect to the procedures for making payments, this may be accommodated through the promulgation of appropriate adminstrative rules with the approval of the Director of the Dairy Division and in consultation with the local industry.

A schedule of payment and reporting dates as suggested by the proponents should apply under the adopted payment plan. Essentially, the payment dates are unchanged from the dates now specified in the order. However, the dates for reporting receipts from producers and from a cooperative association(s) have been advanced to implement the payment plan. As provided herein, handlers would continue to be required to make partial payment for milk received during the first 15 days of the month from producers and for milk received from a cooperative association in its capacity as a bulk tank handler. Handlers would be required to report such receipts to the market administrator by the 22nd day of the month. Payment for such milk by the handlers would have to be received by the market administrator on the 3rd day prior to the end of the month. On the last day of the month, the market administrator would distribute these payments to producers who do not receive their payments through a cooperative association or from a proprietary handler who has requested the option of paying his own producers. In the case of producers receiving their payments from a cooperative or a proprietary handler, the market administrator would make payments to such parties a day earlier so that payments to the individual producers could be made at the same time as for other producers.

The rate of the partial payment would be the Class III price for the preceding month. This rate is now used under the order in making partial payments to producers and producers supported its continued use.

Final accounting for milk from producers and cooperative bulk tank handlers would be completed in the following month. Handlers would be required to submit to the market administrator a report of the monthly receipts from individual producers and a report of all receipts and utilization by the 8th day after the end of the month. The uniform price would be announced by the 13th day. Final payment to the market administrator by handlers at the classified use value for all milk received during the month would have to be received by the market administrator by the 16th day after the end of the month. Payments due producers would be distributed by the market administrator on the 18th day to individual producers who do not receive their payments through a cooperative association or a proprietary handler. Cooperative associations collecting for members and proprietary handlers who elect to pay their own producers would be paid by the market administrator by the 17th day after the end of the month so that they could pay their producers on the 18th also.

A group of handlers located principally in the Pittsburgh metropolitan area, through their trade association, proposed that the final payment date to producers be pushed back from the 18th to the 25th of the month. The spokesman for the group stated that normally they are unable to collect payments from their customers until the 25th to 30th day after the end of the month in which the packaged milk is sold. Consequently, he said, handlers should not be forced to pay producers for milk before they receive payment from their customers.

Producers should not be required to wait until the 25th day after the end of the month for final settlement for their milk. As it is, producers must wait for such payments until the 18th day after the end of the month because of the time required to complete all of the reporting, pricing and payment procedures. Handlers will have had the milk for a considerable period of time and any further delay in the settlement for such milk is unreasonable. The cost of any short term loans that a handler may need to meet order obligations must be considered as a necessary business expense to be borne by the handler. Accordingly, the proposal should not be adopted.

Much of the testimony in opposition to the proposed payment plan focused on the effect it would have on handlers in maintaining a cash flow to meet their total payment obligations to the market administrator. Opponents reasoned that handlers' operating costs would be increased under the plan because they would need to borrow money, because in some cases they would not have obtained complete payments from their customers by the time total obligations for producer milk are due the market administrator.

It is possible that some handlers could incur additional costs in maintaining an adequate cash flow to meet the changed payment requirements under the proposed plan. This would not be due to any increase in their order obligations but rather to a change in the time when they must have sufficient money available to pay for milk for which they had already become obligated by virtue of having received it. Although handlers know at the time of receipt that they are obligated for the milk, handlers customarily do not pay for the milk any sooner than required by the order. For rea-

sons already noted, there is a considerable lag between the receipt of the milk and the date by which final payment for milk is required. Handlers have tended to adjust their cash flow to this lag even though they knew from the time of receipt that they were obligated for the milk. It is recognized that with a shortening of this time lag some handlers may have to adjust their cash flow. The fact that it may result in additional costs cannot be an overriding consideration in deciding this issue when one takes into account the considerable time lag that would still exist between the receipt of milk and the final payment for it.

Opponents suggested that in lieu of the proposed payment plan more enforcement actions should be instituted to assure that producers are paid on time. This, however, is a cumbersome administrative route and the practicableness of such action is questionable in the case of handlers who are only several days late. Nevertheless, even with the adopted order changes persistent late payers would continue to be subject to legal enforcement action as authorized under the Act, and such actions would continue to be instituted as circumstances warrant.

As noted earlier, the attached order does not prescribe the means by which a handler must make payment to the market administrator. Unless some specificity in this regard is found necessary later, handlers should be given the flexibility of using whatever payment means they wish. The only requirement would be that a handler's payments must be received by the market administrator by the prescribed dates. Such dates would be the 3rd day prior to the end of the month for the partial payment and the 16th day after the end of the month for the final payment. Payments not received by these dates would be considered late and subject to the charge on overdue accounts. Under this arrangement each handler, of course, will have to determine what means of payment will result in timely payments for him.

Recognition should be given to the occasional conflicts between scheduled payment dates and weekends. It is desirable that producers be paid as soon as possible. For this reason, the payment schedule adopted herein purposely leaves little time between the dates when handlers must make payments to the market administrator and when payments must then be made to producers by the market administrator and handlers. However, should a payment date fall on a Saturday, Sunday or national holiday, when offices normally are not open for business, the "tight" payment schedule could not be adhered to in all cases. Accordingly, if the date by which payments must be received by the market administrator, or made by him to producers, cooperatives or handlers falls on such a day, payments should not be due until the next day on which the market administrator's office is open for public business. Further, the order should provide that when the partial or final payments are so delayed, the corresponding payments by the market administrator to handlers, cooperatives and producers, as well as the subsequent payment by handlers to producers, may be delayed by the same number of days.

This schedule of reporting and payment dates will result in producers receiving their final payment for milk as soon as possible after the end of the month. The partial and final payment dates remain unchanged from those presently specified in the order. It is noted that under the schedule adopted herein there could be occasions when there is a relatively short period between the time when the market administrator receives and processes a handler's report and notifies the handler of his obligations to the producer-settlement fund and the date by which the handler must pay the market administrator. It is contemplated that the market administrator may need to notify handlers immediately by telephone of handlers' order obligations, with written confirmation to be supplied later. Similarly, the adopted schedule contemplates that payments by the market administrator to proprietary handlers who are paying producers and to cooperatives collecting payments for members will be available by the next day for payments to individual producers. To assure this, it may be necessary for the market administrator to arrange for an interbank transfer of funds so that producer payments can be made on a timely basis.

In making their partial and final payments to the market administrator, handlers would be permitted to subtract deductions authorized by producers. Such deductions for each producer in the case of partial payments should not exceed the value (at the Class III price) of the milk received from the producer during the 15-day period. With respect to deductions made from final producer payments, the total deductions for the month shall not exceed the value of milk received from the producer during the month.

A producer's authorization for a handler to deduct monies for payment to an assignee does not relieve the handler of his obligation to make full payment for milk received from producers by the date prescribed in the order. Thus, it is expected that the amounts deducted by handlers will be paid to assignees by the time handler payments are due the market administrator. This is necessary to insure that all handlers are paying the minimum class prices for their producer milk by the dates required in the order.

Payments for milk from cooperative association plants and cooperative bulk tank handlers. As an integral part of their overall payment plan, proponent cooperatives proposed that pool plant operators receiving bulk fluid milk products from a cooperative's pool plant or milk from a cooperative bulk tank handler who operates a pool plant be required to pay for such milk in the same manner as it proposed for milk received directly from producers. This proposal should be adopted.

The order now requires that a pool plant operator shall make payment to a cooperative association on or before the 15th day following the end of the month at the class use value for fluid milk products received either by transfer or diversion from a pool plant operated by a cooperative. This payment arrangement also applies to any milk received by a pool plant operator from a cooperative bulk tank operator if such cooperative association operates a pool plant.

Some of the milk marketed by proponent cooperatives is moved to distributing plants directly from the farm. However, to a large extent, milk is moved to such plants, either on a regular basis or a supplemental basis, from the proponent cooperatives' supply plants either by transfer or diversion. Irrespective of the supply arrangements used, the producers involved are supplying milk for the fluid market and should be assured of receiving payment for their milk. Such assurance is essential to the orderly marketing of milk. Moverover, such a payment requirement is consistent with the Act, which provides that no cooperative association may sell milk to any handler at less than the prescribed order class prices.

Accordingly, handlers receiving bulk fluid milk products from the pool plant of a cooperative or milk from a cooperative bulk tank handler that operates a pool plant should be required to make partial and final payments to the market administrator by the same dates as specified for handlers receiving milk directly from producers. The partial payment, which would apply to receipts during the first 15 days of the month, should be at the Class III price for the preceding month and adjusted by the butterfat differential for the preceding month. The final payment should be based on the classified use value of all bulk milk products received during the month from such cooperative. Upon receipt of the money, the market administrator would then pay any of such funds due the cooperative.

In this regard, the Class I price to be used in computing a handler's obligation for plant milk from a cooperative should be the higher of the Class I

prices applicable at the plants of the handler and the cooperative. Thus, in those cases where Class I milk is transferred from a cooperative's plant to a distributing plant in a higher-priced zone, the distributing plant operator would be obligated for such milk at the Class I price applicable at his plant. This price, is most cases, would reflect the value of the milk at the cooperative's plant plus the cost of transporting it to the distributing plant. This is the same price that would apply to Class I milk received at the distributing plant directly from producers or a cooperative acting as a bulk tank handler and thus provides uniformity of pricing among handlers.

Although it is unlikely in this market under present conditions, Class I milk may be transferred from a cooperative's pool plant to a pool distributing plant in a lower-priced zone. In this case, the distributing plant operator should be required to pay the cooperative (through the market administrator) for such milk at the Class I price applicable at the cooperative's plant. Payment at this price level is necessary if the payment provisions are to be consistent with the Act.

The Act states that a cooperative that is reblending the proceeds from the sale of its members' milk may not sell milk to any handler at less than the class prices applicable to the cooperative on such milk. Under the order, the cooperative would have to account to the pool for the Class I milk transferred from its plant to a lower-priced zone at the Class I price applicable at its plant. Since the cooperative could not sell the Class I milk at less than this price, this is the price that the buying handler must be required to pay. It is recognized that under this arrangement such a sale would be uneconomic to the buying handler and under most circumstances would not take place.

5. *Administrative provisions—(a) Administrative Assessment.* The order should be revised to provide that each handler operating a pool plant shall pay the administrative assessment on milk received at his plant from a cooperative association in its capacity as a handler on farm bulk tank milk and by transfer or diversion in bulk from a pool plant operated by a cooperative association. A cooperative association should pay the administrative assessment only on its receipts of producer milk that are not moved to another handler's plant. Presently, a cooperative pays an administrative assessment on all of its receipts of producer milk.

Cooperatives proposed this change in conjunction with their proposed payment plan whereby all handlers receiving milk from producers and cooperative associations would pay their total classified use value for such milk to the market administrator who, in turn, would pay producers and cooperative associations. Proponents claimed that this change would facilitate the administration of their proposed payment plan. Proponents' witness stated that the proposed change would eliminate the need for a cooperative association to bill handlers the cost of the administrative assessment that is paid by the cooperative on plant milk and farm bulk tank milk that the cooperative moves to pool plants.

Several proprietary handlers objected to the proposed change. They stated it would impose an additional expense on proprietary handlers and would relieve cooperatives of their share of the expense of the order administration. It was further argued that the Act does not authorize a cooperative association to be excluded from being responsible for the administrative assessment on any such milk for which it is the handler.

The Act provides that the cost of administering an order shall be borne by handlers and that the Secretary shall establish each handler's pro rata share of this cost. To implement this, the order should provide that the administrative cost be apportioned among those handlers primarily engaged in the processing of milk. This is because much of the time and money expended in administering the order is for the verification of receipts and utilization of such handlers.

Under the present order, proprietary handlers pay an administrative assessment on milk received directly from producers and from a cooperative association not operating a pool plant that is acting as a bulk tank handler. For milk that such handlers receive from a cooperative's pool plant or from a plant-operating cooperative acting in its capacity as a bulk tank handler, the administrative assessment is now paid by the cooperative. It is reasonable in these latter cases, however, that the handlers processing the milk, rather than the cooperative, be the handler obligated under the order for the administrative assessment. The cooperative's role as a "handler" is merely that of moving the milk from farms to the processing plants, whether it be directly or through the cooperative's plant. Defining the cooperative as a "handler" under the order in these circumstances facilitates the administration of the order in terms of the initial accountability for the milk. However, the verification activities under the order are related basically to those operations where the milk is actually processed.

Applying the administrative assessment in the revised manner also would be in keeping with the intent of the Act that prices be uniform among handlers. It is a general practice for cooperatives to pass on to handlers the administrative assessments associated with the milk which they sell to handlers. Nevertheless, competitive pressures could develop that might encourage a cooperative to sell milk only at the class price with no recovery of the related administrative assessment. In this case, the handler purchasing such milk could be acquiring his milk at a lesser price than his competitors, thereby resulting in nonuniformity of prices. This situation also could be disruptive to the normal supply arrangements in the market in that there would be an incentive for handlers to seek out the cheaper milk supplies.

(b) *Late-payment charges.* A late payment charge should continue to apply on all overdue handler obligations to the market administrator. However, such charge should be applied beginning the first day following the date that a payment is due rather than the third day after the due date. Proponents of the proposed payment plan supported this change.

The order now applies a charge of 1 percent per month on a handler's obligations to the market administrator that are overdue. Presently, the late payment charge begins on the third day after the due date of such obligation and is applied again on the same day of each succeding month until such obligation is fully paid. A handler's obligations to which late payment charges apply include those due the producer-settlement fund, the administrative expense fund, and the marketing service fund, all of which are maintained by the market administrator.

The payment schedule under the plan adopted herein provides for a sequence of dates that must be met by a handler which will enable the market administrator to make payments to producers, cooperatives and certain handlers on schedule. To this end, the plan provides that a handler's payment must be received by the market administrator on the date prescribed. Failure on the part of a handler to meet such payment dates would force the market administrator to withhold funds from producers and/or a cooperative until such handler submits payment for his order obligations.

The late payment charge and the date that the charges applies are designed to provide handlers an incentive to make their payments to the market administrator on time.

Because of the extent of the late payment problem that has persisted in the market and to conform with the overall objective of the payment plan adopted herein, it is necessary that the late payment charge apply on the first day that such payment is overdue. Delaying the application of the charge, which is the case under the present order, would only serve to reduce the effectiveness of the late payment charge and the purpose of the adopted payment plan.

The application of the late payment charge on the day following the date when payment is due may require some adjustment in the billing procedures of the market administrator to handlers. In this connection, the market administrator may need to advance the time when a handler is billed his monthly final obligations so that the handler in turn will have sufficient time to make payment by the prescribed due date. This adjustment, however, can be accomplished within the framework of the existing order and thus requires no amendatory action.

(c) *Miscellaneous payment procedure.* The order should specify that when a past due obligation for milk purchases is paid by the handler to the market administrator, the market administrator shall complete such payments first to those producers and/or cooperatives who have the oldest outstanding payments due them. This payment procedue was included in proponent cooperatives' proposed payment plan.

The record establishes that there have been instances where late-paying handlers who have received part of their milk supplies from a cooperative association have paid their other suppliers (principally nonmember producers) before paying the cooperative. There also have been instances where a handler has discontinued purchasing milk from a cooperative without paying his past due obligations to such cooperative. In such case, the handler switched to a new source of supply and paid for the milk from this source without paying his past due obligations to the former supplier.

The order does not require a handler to purchase milk from any particular producers or group of producers. However, it does require total payment of order obligations on any milk received at a handler's pool plant from a producer or group of producers in accordance with terms specified in the producer payment provisions. In this connection, the order should specify the procedure that the market administrator shall follow in disbursing past due obligations collected from a handler to the producers and/or cooperatives involved.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

In their brief, opponents of expanding the marketing area to include a portion or all of the Ohio counties of Erie, Huron, Ottawa and Sandusky renewed their objection to the admission into evidence of an exhibit identified at the hearing as Exhibit 12. The Administrative Law Judge's ruling on this matter has been reviewed in terms of the arguments presented. This ruling, for the reasons stated by the Administrative Law Judge on the record, is hereby affirmed.

Counsel for a trade association of handlers located in Western Pennsylvania made a motion at the hearing that the payment plan proposal (Proposal No. 1 as set forth in the hearing notice, 42 FR 48886) not be considered. An attorney for the operator of a regulated distributing plant supported the motion. In support of the motion, it was indicated that the Act does not provide for such a payment plan and such a plan is not necessary to effect prompt payments to producers and/or cooperative associations. Additionally, it was indicated that proper enforcement action against handlers who are paying late is all that is necessary to effectuate the payment provisions of the present order. The Administrative Law Judge denied the motion. This matter was reiterated in their post-hearing briefs.

Requiring handlers to channel all payments for milk purchases from producers and cooperative associations through the market administrator may be adopted pursuant to the authority set forth in section 608c(7)(D) of the Act. This subsection specifies that an order may contain various terms that are incidental to, and not inconsistent with, the terms explicitly authorized by the Act if the incidental terms are found necessary to effectuate the other provisions of the order. The payment plan adopted herein is considered essential to the effectuation of the payment provisions of the order.

It is true, as argued at the hearing and in post-hearing briefs, that the Act does contain provisions in section 608c(14) pertaining to certain penalties applicable to handlers not complying with the terms and provisions of the order. In short, these provisions specify that a handler shall be fined a monetary amount upon being convicted of violating a provision of an order. However, these provisions do not preclude the use of the payment plan adopted herein under section 608c(7)(D).

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order as hereby proposed to be amended, are in the current interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 3 cents per hundred weight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1036.85 of the aforesaid tentative marketing agreement and the order as proposed to be amended.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. In § 1036.2, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 1036.2 Eastern Ohio-Western Pennsylvania marketing area.

* * * * *

(a) "Zone 1" includes:

(1) In Ohio:

(i) The following counties in their entirety:

Ashland, Ashtabula, Carroll, Geauga, Harrison, Holmes, Monroe, Portage, Tuscarawas, and Wayne.

(ii) In Guernsey County: the townships of Londonderry, Millwood and Oxford.

(iii) In Stark County: Sugar Creek Township.

(iv) In Trumbull County: the townships of Bazetta, Bloomfield, Bristol, Champion, Farmington, Fowler, Greene, Gustavus, Hartford, Johnston, Kinsman, Mecca, Mesopotamia, Southington, and Vernon.

* * * * *

(b) "Zone 2" includes:

(1) In Ohio:

(i) The following counties in their entirety:

Belmont, Columbiana, Jefferson, Lorain, Mahoning, Medina, and Summit.

(ii) Stark County (except Sugar Creek Township).

(iii) In Trumbull County: the townships of Braceville, Brookfield, Howland, Hubbard, Liberty, Lordstown, Newton, Warren, Weathersfield, and Vienna.

* * * * *

2. In § 1036.7, paragraph (b) is revised to read as follows:

§ 1036.7 Pool plant.

* * * * *

(b) A supply plant from which not less than 40 percent during the months of September, October and November and not less than 30 percent in all other months, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received at such plant from dairy farmers (including milk diverted from the plant as producer milk pursuant to § 1036.13 but excluding milk received as diverted milk) and handlers defined in § 1036.9(c) is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants qualified under paragraph (a) of this section or disposed of as route disposition in the marketing area.

* * * * *

3. Section 1036.13 is revised to read as follows:

§ 1036.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer which is:

(a) With respect to a handler defined in § 1036.9(a):

(1) Received at the handler's pool plant directly from the producer, excluding receipts of milk diverted from another pool plant;

(2) Received at the handler's pool plant from a handler defined in § 1036.9(c) that does not operate a pool plant;

(3) Diverted pursuant to paragraphs (e), (f) and (g) of this section for the handler's account from his pool plant to a nonpool plant that is not a producer-handler plant; or

(4) Diverted for the handler's account from his pool plant to another pool plant, subject to the conditions set forth in paragraph (h) of this section;

(b) With respect to a handler defined in § 1036.9(b), diverted pursuant to paragraphs (e), (f) and (g) of this section for the handler's account from a pool plant of another handler to a nonpool plant that is not a producer-handler plant;

(c) With respect to a handler defined in § 1036.9(c) that does not operate a pool plant, received by the handler from the producer's farm in excess of the producer's milk that is received by a pool plant operator pursuant to paragraph (a)(2) of this section; and

(d) With respect to a handler defined in § 1036.9(c) that also operates a pool plant, received by the handler from the producer's farm.

(e) During April through August and subject to the conditions of paragraph (g) of this section, the operator of a pool plant or a cooperative association may divert the milk of a producer without limit.

(f) During September through March and subject to the conditions of paragraph (g) of this section:

(1) The operator of a pool plant that is not a cooperative association may divert any producer milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (f)(2) of this section in accordance with one of the following alternatives:

(i) The milk of an individual producer may be diverted for not more days of production of his producer milk than is physically received at pool plants; or

(ii) The plant operator may divert an aggregate quantity of milk of producers not exceeding 40 percent of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator.

(2) A cooperative association may divert the milk of a producer during the month in accordance with one of the following alternatives:

(i) The milk of an individual producer may be diverted for not more days of production of his producer milk than is physically received at pool plants; or

(ii) The cooperative association may divert an aggregate quantity of milk not exceeding 40 percent of the producer milk that the cooperative association causes to be delivered during the month to pool plants.

(g) The following conditions shall apply with respect to milk diverted pursuant to paragraphs (a)(3) and (b) of this section:

(1) Milk of a producer shall not be eligible for diversion unless the milk of such producer was physically received at least once as producer milk at a pool plant and the dairy farmer has continuously retained producer status under the order since that time;

(2) During each month of September through November at least one day's production of milk of a producer must be received at a pool plant for the milk of such producer to be eligible for diversion that month pursuant to paragraphs (f)(1)(ii) and (2)(ii) of this section;

(3) Such milk shall be deemed to have been received by the diverting handler at the location of the nonpool plant to which diverted;

(4) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be deemed to have been received at such pool plant and shall not be producer milk;

(5) If milk is diverted in excess of the limit by a handler who elects to divert on the basis of days of production, only that milk of the individual producer which was received at a pool plant or which was diverted to a nonpool plant for not more days of production than is physically received at a pool plant shall be considered as producer milk;

(6) If milk is diverted in excess of the percentage limit by a handler who elects to divert on an aggregate basis, eligibility as producer milk shall be forfeited on a quantity of milk equal to such excess;

(7) In cases of excess diversions, the diverting handler shall specify the dairy farmers' deliveries that are ineligible as producer milk. If the handler fails to do so, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(8) Milk diverted to another order plant shall be producer milk only if a Class II or Class III classification is designated for such milk pursuant to

the provisions of the other order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order.

(h) Milk diverted from a pool plant to another pool plant shall be deemed to have been received by the diverting handler at the location of the pool plant to which diverted.

4. Section 1036.31 is revised to read as follows:

§ 1036.31 Payroll reports.

(a) On or before the 18th day after the end of each month, each handler who elects pursuant to § 1036.73(d) to pay producers shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer;

(5) The net amount of payment to the producer; and

(6) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1036.76(a) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month:

(1) The name of each dairy farmer;

(2) The total pounds of milk received from each dairy farmer;

(3) The average butterfat content of such milk;

(4) The amount and nature of any deductions, as authorized by the dairy farmer, from the payment for such milk; and

(5) The rate of payment per hundredweight and the net amount paid each dairy farmer.

5. Section 1036.32 is revised to read as follows:

§ 1036.32 Other reports.

(a) On or before the 22nd day of each month each handler described in § 1036.9(a), except a cooperative association which operates a pool plant or a handler who elects to pay producers pursuant to § 1036.73(d), shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

(1) The identity of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1036.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(b) On or before the 22nd day of each month each handler defined in § 1036.9 (a), (b) and (c) except a handler who is required to file reports pursuant to paragraph (a) of this section shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

(1) The total pounds of producer milk;

(2) The total deductions as authorized by the producers to be made from the partial payment for such milk;

(3) The total pounds of milk received from a handler described in § 1036.9(c); and

(4) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(c) On or before the 8th day after the end of each month, each handler described in § 1036.9(a), except a cooperative association which operates a pool plant or a handler who elects to pay produces pursuant to § 1036.37(d), shall report to the market administrator the following information with respect to its receipts of milk during such month:

(1) The identity of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer and its average butterfat content;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim milk and butterfat received from a handler described in § 1036.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(d) On or before the second day prior to the reporting dates specified in paragraphs (a) and (c) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to pool plants of other handlers within the time periods described in paragraphs (a) and (c) of this section shall report to each such pool plant operator and the market administrator the name and location of the transferor-plant and the total pounds and butterfat content of the bulk fluid milk products transferred or diverted from the plant.

(e) In addition to the reports required pursuant to paragraphs (a) through (d) of this section and §§ 1036.30 and 1036.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(f) Each producer-handler shall report to the market administrator at such time and in such manner as the market administrator may prescribe.

(g) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator.

(6) In § 1036.70, paragraph (a) is revised to read as follows:

§ 1036.70 Producer-settlement fund.

(a) The market administrator shall establish and maintain a separate fund known as the "Producer-settlement fund", into which he shall deposit the payments made by handlers pursuant to §§ 1036.71, 1036.76, 1036.77 and 1036.78 and from which he shall make all payments pursuant to §§ 1036.73 and 1036.77.

* * * * *

7. Section 1036.71 text and heading are revised to read as follows:

§ 1036.71 Payments to the market administrator.

(a) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the third day prior to the end of each month an amount determined by multiplying the handler's receipts of producer milk during the first 15 days of such month by the Class III price for the preceding month, less:

(1) Proper deductions authorized by producers from whom the handler received milk, except that the amount deducted for each producer shall not exceed the value (at the Class III price) of the milk received from the producer during the 15-day period; and

(2) With respect to a cooperative association in its capacity as a handler pursuant to § 1036.9 (a) or (c), any payments made to the market administrator pursuant to paragraph (c)(1) of this section.

(b) Subject to paragraph (d) of this section, each handler shall pay to the

market administrator on or before the 16th day after the end of each month an amount equal to such handler's value of milk for such month determined pursuant to § 1036.60(a), as adjusted by the butterfat differential specified in § 1036.74, and pursuant to § 1036.60 (b) through (e), less:

(1) Payments made by the handler pursuant to paragraph (a) of this section for such month;

(2) Proper deductions for the month that were authorized by producers from whom the handler received milk, except that the amount deducted for each producer shall not exceed the value of milk received from the producer during the month;

(3) The value at the weighted average price applicable at the location of the plants from which received plus 5 cents with respect to other source milk for which a value is computed pursuant to § 1036.60(e); and

(4) With respect to a cooperative association in its capacity as a handler pursuant to § 1036.9 (a) or (c), any payments made to the market administrator pursuant to paragraph (c)(2) of this section.

(c) Subject to paragraph (d) of this section, each handler operating a pool plant who receives bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association, or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1036.9(c) that also operates a pool plant, shall pay the following amount for such milk to the market administrator, who in turn shall pay to the cooperative association any net amount due it:

(1) On or before the third day prior to the end of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the Class III price for the preceding month, as adjusted by the butterfat differential specified in § 1036.74 for the preceding month; and

(2) On or before the 16th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1036.42 by the applicable class price, as adjusted by the butterfat differential specified in § 1036.74, less any payment made by the handler pursuant to paragraph (c)(1) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the higher of the Class I prices applicable at the transferee-plant and the transferor-plant.

(d) The following conditions shall apply with respect to the payments prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator; and

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or on any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(e) On or before the 25th day after the end of the month, each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (e)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

8. Section 1036.72 is revoked and the section designation "1036.72" is reserved.

9. Section 1036.73 is revised to read as follows:

§ 1036.73 Payments to producers and to cooperative associations.

(a) Subject to paragraphs (c) through (f) of this section, the market administrator shall pay each producer on or before the last day of each month for milk for which payment pursuant to § 1036.71(a) and (c)(1) has been received by the market administrator. Such payment shall be at a rate per hundredweight equal to the Class III price for the preceding month less the amounts specified in § 1036.71(a).

(b) Subject to paragraphs (c) through (f) of this section, the market administrator shall pay each producer on or before the 18th day after the end of each month for milk for which payment pursuant to § 1036.71(b) and (c)(2) has been received by the market administrator. Such payment shall be the uniform price computed pursuant to § 1036.61 for the month, subject to the following adjustments:

(1) Any applicable adjustments pursuant to §§ 1036.74 and 1036.75;

(2) Less the payments described in paragraph (a) of this section;

(3) Less deductions for marketing services pursuant to § 1036.86;

(4) Less the authorized deductions specified in § 1036.71(b)(2); and

(5) Any adjustments for errors in calculating payments to an individual producer for the past months.

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator by the cooperative association as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a) and (b) of this section.

(d) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay to each handler who so requests for milk received by the handler from producers for whom a cooperative association is not collecting payments pursuant to paragraph (c) of this section an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a) and (b) of this section. The handler then shall pay the individual producers the amounts due them by the respective dates specified in paragraphs (a) and (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months. In making payments to producers pursuant to this paragraph, the handler shall furnish each producer the following information:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

(e) The following conditions shall apply with respect to the payments prescribed in paragraphs (a) through (d) of this section:

(1) If the date by which such payments are to be made falls on a Satur-

day or Sunday or on any day that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of § 1036.71 (d)(2) or paragraph (e)(1) of this section results in a delay in the partial or final payments by handlers to the market administrator or by the market administrator to handlers, the corresponding partial or final payments prescribed in paragraphs (a) through (d) of this section may be delayed by the same number of days.

(f) If the market administrator does not receive the full payment required of a handler pursuant to § 1036.71, he shall reduce uniformly per hundredweight the payments due producers and/or cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler. The market administrator shall first complete the payment to producers and/or cooperative associations who have the oldest outstanding payments due them.

10. Section 1036.77 is revised to read as follows:

§ 1036.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due the market administrator from such handler, due such handler from the market administrator, or due any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be make on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice. The market administrator shall offset any monies due a handler against monies due from such handler.

11. Section 1036.78 is revised to read as follows:

§ 1036.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1036.71, 1036.76, 1036.77, and 1036.85 shall be increased 1 percent beginning on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid.

12. Section 1036.85 is revised to read as follows:

§ 1036.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 16th day after the end of the month 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk handled during the month as follows:

(a) Each handler with respect to his receipts of producer milk (including such handler's own-farm production and milk received from a cooperative association pursuant to § 1036.9(c)), fluid milk products transferred or diverted in bulk from a pool plant operated by a cooperative association and other source milk allocated to Class I pursuant to § 1036.44(a) (7) and (12) and the corresponding steps of § 1036.44(b), except such other source milk on which no handler obligation applies pursuant to § 1036.60(e); and

(b) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area in excess of the skim milk and butterfat subtracted pursuant to § 1036.76(b)(2).

13. Section 1036.86 is revised to read as follows:

§ 1036.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, the market administrator, in making payments to producers pursuant to § 1036.73, shall deduct 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk of such producer (except a handler's own-farm production) for whom the marketing services set forth in this paragraph are not being performed by a cooperative association as determined by the Secretary. The monies shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. The services shall be performed by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, the market administrator shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 17th day after the end of each month shall pay such deductions to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which a deduction was computed for each such producer.

Signed at Washington, D.C., on March 31, 1978.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 78-9098 Filed 4-4-78; 8:45 am]

[6740-02]

DEPARTMENT OF ENERGY

Office of the Secretary

[10 CFR Parts 210, 211, 212]

[Docket No. EA 78-1]

MOTOR GASOLINE DECONTROL AND TRANSITION REGULATION

Analysis and Recommendations

CROSS REFERENCE: For a document containing the Federal Energy Regulatory Commission's recommendations to the Secretary of Energy regarding the Secretary's proposals to exempt motor gasoline from the mandatory price and allocation regulations, and special rule No. 4, a transitional gasoline program, see FR Doc. 78-9012, which appears under the Federal Energy Regulatory Commission in the proposed rules section of this issue. (The page number for this document is listed in the table of contents at the front of this issue under "Federal Energy Regulatory Commission.")

[6740-02]

Federal Energy Regulatory Commission

[10 CFR Parts 210, 211, and 212]

[Docket No. EA 78-1]

MOTOR GASOLINE DECONTROL AND TRANSITION REGULATION

Analysis and Recommendations

AGENCY: Federal Energy Regulartory Commission.

ACTION: Recommendation.

SUMMARY: This document contains the Federal Energy Regulatory Commission's recommendations to the Secretary of Energy regarding the Secretary's proposals to exempt motor gasoline from the mandatory price and allocation regulations, and special rule No. 4, a transitional gasoline program. Pursuant to section 404 of the DOE Organization Act the Commission has concurred in the proposals to exempt gasoline from the regulations and also concurred with certain recommended changes, in the Secretary's proposed transitional gasoline assignment program.

FOR FURTHER INFORMATION CONTACT:

Robert L. Baum, Deputy General Counsel, 825 North Capital Street

NE., Washington, D.C. 20426, 202-275-4333.

INTRODUCTION

By letter dated October 19, 1977, the Secretary of Energy forwarded to the Federal Energy Regulatory Commission certain amendments to the regulation under the Emergency Petroleum Allocation Act (EPAA) proposed by the Federal Energy Administration (FEA) on August 9, 1977. Included were proposals to exempt motor gasoline from the mandatory petroleum allocation regulations as well as the mandatory petroleum price regulations. In order to take effect, an exemption from either the pricing or allocation regulations must be submitted to Congress as an "energy action." Under section 402(c)(1) of the DOE Act, the Commission is required to "consider" these proposals prior to submission to Congress by the Secretary.

A separate proposal, also forwarded by the Secretary to the Commission on October 19, 1977, was "Special Rule No. 4," a transitional motor gasoline assignment program which would remain in effect for the year following the exemption of gasoline if the exemption becomes effective. Special rule No. 4 was transmitted in accordance with section 404(a) of the DOE Act, which requires the Secretary to notify the Commission of proposals to prescribe rules of general applicability in the exercise of any of the Secretary's functions transferred to him under section 301 or 306 of the DOE Act. If the Commission, in its discretion, determines that the proposed action significantly affects any functions within the jurisdiction of the Commission under inter alia section 402(c)(1), the Secretary shall immediately refer the proposal to the Commission.

At a Commission meeting on October 27, 1977, the Commission considered special rule No. 4 and determined that the proposal did significantly affect a function within the jurisdiction of the Commission, viz, the exemption, and requested referral. At that same meeting, the Commission approved a FEDERAL REGISTER notice inviting comments and scheduling a public hearing on both proposals.

The notice was published in the FEDERAL REGISTER on November 2, 1977, and established December 5, 1977, as the last day for written comments. A public hearing was scheduled and held on November 29, and 30. In addition, letters calling attention to the proceeding were sent to approximately 29 consumer organizations as well as major trade organizations which are concerned with the subject matter.

The notice in the FEDERAL REGISTER indicated that the FEA had held public hearings (six regional hearings in addition to the national hearing in Washington) and that the records of those hearings along with comments filed as a result of the FEA's August proposal would be available to the Commission. Accordingly, this summary reflects the views expressed in response to the Commission's November 2 notice as well as those expressed to FEA as a result of that Agency's August 9 proposal.

In order for a product to be exempted from the regulations the Secretary must find that the exemption is consistent with the attainment of public policy objectives in section 4(b)(1) of the EPAA. These objectives are as follows:

(A) Protection of public health (including the production of pharmaceuticals) safety and welfare (including maintenance of residential heating, such as individual homes, apartments, and similar occupied dwelling units), and the national defense;

(B) Maintenance of all public services (including facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or local government or authority, and including transportation facilities and services which serve the public at large);

(C) Maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;

(D) Preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producting, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, non-branded independent marketers, and branded independent marketers;

(E) The allocation of suitable types, grades, and quality of crude oil to refineries in the United States to permit such refineries to operate at full capacity;

(F) Equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users;

(G) Allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of, exploration for, and production or extraction of—

(ii) Minerals essential to the requirements of the United States, and for required transportation related thereto;

(H) Economic efficiency; and

(I) Minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms.

In addition, section 12 of the EPAA provides that any amendment submitted to Congress which proposes an exemption from the allocation regulations be accompanied by a finding that the product is no longer in short supply and the exemption would not have an adverse effect on the supply of any other oil or product. The exemption from the price regulations must be accompanied by findings that competition and market forces would provide adequate protection for the consumer and that such amendment would not result in inequitable prices for any class of user. The exemption also must be accompanied by an analysis of the potential economic impact of such amendment.

The Secretary has: (a) determined that the exemptions are consistent with the public policy objectives in § 4(B)(1) of the EPAA (supra), (b) found that motor gasoline is no longer in short supply and that exempting it from the pricing and allocation regulations would not have an adverse effect on the supply of oil or other refined products, (c) found that competition and market forces will provide adequate protection for the consumer and the exemption will not result in inequitable prices for any class of user, and (d) provided an analysis of the potential economic impact of the proposed exemptions. It is these issues which the Commission must now consider.

Although a representative of the Secretary made an oral presentation at the hearing on November 29, the basis for the Secretary's determinations and findings is contained in a document entitled "Final Report—Findings and Views Concerning the Exemption of Motor Gasoline from the Mandatory Petroleum Allocation and Price Regulations, September 1977." This document was made available to interested persons in this proceeding. An earlier draft was made available to the public at the time of the FEA proposal. At that time it was FEA's "Preliminary Findings." Subsequent to FEA's review of the comments and oral statements in that Agency's proceedings, it was revised as a final report.

In addition to a general discussion of the motor gasoline industry and history of price controls, supply and demand trends, etc., the final report contains the technical information which the Secretary believes supports the determination and findings which must accompany the exemption.

GASOLINE SUPPLY AND DEMAND

FEA ANALYSIS

Chapter IV of the final report contains an analysis of supply and

demand projections through the year 1979. Since so many of the issues depend on the availability of motor gasoline, this chapter deserves special attention. The FEA analysis indicates that the total supply of motor gasoline will be barely adequate to meet the total projected demand for 1978 and 1979 on an annual basis. That analysis assumed no waiver to the lead phasedown schedule by the Environmental Protection Agency and that the use of MMT (an octane booster) would be banned. Chapter IV also gives the results of a survey of 17 large refiners representing production of 84.1 and 78.4 percent, respectively, of domestic unleaded and leaded gasoline. The aggregation of the estimates of the refiners indicated that supply will meet demand "comfortably in 1978" and "marginally in 1979 if the EPA approves such requests it has received for waivers from its lead phasedown schedule." The refiners' forecast indicated that if EPA did not grant the waivers a shortfall of about 200,000 barrels per day in 1979 could develop.

At the public hearing the representative of the Environmental Protection Agency indicated that the Agency has requests from 52 refiners for suspension of the regulations with respect to 109 refineries. Indicating that they had already granted a few of the requests, the EPA spokesman went on to state, "We anticipate granting the suspensions for the majority of the remaining requests that are still pending." Again, the FEA's own "worst case analysis" showed supplies to be tight but adequate, even without such waivers, and the refiners' own aggregated estimates indicated that supply would marginally meet demand, if the EPA granted the waivers.

More specifically, the supply problem in 1979 is identified as primarily one of domestic refiners difficulty in producing sufficient quantities of high octane gasoline without the use of lead or other additives to increase octane ratings. The report points out that this situation, to the extent that it is a problem, will be a problem with or without controls. It further indicates that if a supply shortage does materialize in 1979 the Federal Government will be faced with the choice of allowing price increases which would restrain demand, or to suffer the shortfall, restraining prices by price controls, and distributing the available gasoline by allocation controls. In this regard it should be noted that any product which is exempted from the regulations under section 4(a) of the EPAA is subject to the reimposition of price and allocation controls if the Secretary determines that the reimposition of controls is necessary to attain the objectives in § 4(b)(1) [quoted infra].

None of the commenters presented any independent analysis of the supply/demand situation. Some companies indicated they did have such projections, but their own analysis did not indicate that supply would be insufficient to meet demands through 1979. Also, to the extent that individual major refiners were asked, they indicated that their own projections led to the conclusion that they would be able to satisfy their customers' demands for both leaded and unleaded gasoline, through 1979, taking into account their projected growth.

SUPPLY AND OUTLOOK FOR PRICES

The final report on the proposed exemption, summarizes the Secretary's analysis of the outlook: "FEA forecasts an adequate supply situation in 1979 despite a refiners' survey indicating possible shortfall in 1979 and FEA concludes that the maintenance of allocation and price controls in not warranted." These conclusions are based upon FEA's analysis of the gasoline market. Their analysis focused on four topics: (1) a forecast of oil product demands for 1977-79, (2) refining capacity and oil supply, (3) pressures on costs and prices, and (4) trends that may affect competition.

DOE staff continually reviews developments in the petroleum industry and periodically checks with the Council of Economic Advisers to determine if revisions in the economic outlook make it necessary to revise their projections. Actual behavior of the petroleum industry and the economy subsequent to the publication of the final report have not lead to any significant changes in projections from the model used by FEA and DOE in analyzing the outlook for the oil markets. Analysts studying a subject as complex as the gasoline market, however, rarely if ever reach unanimous conclusions on all details and the projections cannot be proven. It is, therefore, not surprising that some analysts do not accept the FEA conclusions.

Two commenters on the final report presented points of view significantly different from FEA. This analysis therefore includes evaluation of points made in comments by Congressmen Floyd J. Fithian and Andrew Maguire. It also includes a review of points made by William H. Bode, Attorney for Nelson Oil Co. Mr. Bode presented questions for DOE and the DOE's answers to those questions are also included as part of the total package of information to be considered.

DEMAND FOR MOTOR GASOLINE

Domestic demand for gasoline and all products was prepared by FEA analysts using an econometric model and DOE provided backup details on its use of macroeconomic variables. The demand forecast is predicated on inputs showing expected development in real GNP, consumer prices, wholesale prices, manufacturing activity, real national income, wholesale prices for fuels, defense purchases, and production of chemicals. The concept and the input factors, at the very least, offer a plausible system for projecting the oil market under normal circumstances. The validity of the projection is, of course, also dependent on the accuracy of predictions of input factors.

The FEA projections were made with the realization that new developments would not be reflected in the output from their model. The projections were therefore revised to reflect the impact of the crude oil equalization tax (COET), the increased use of diesel engines in cars and trucks, and expected improvements in efficiency of gasoline engines.

The COET impact on product demand would reflect the market response to price changes caused by the tax. This impact has been developed by the DOE model and like the impact of most oil price changes, is small in the short run.

The impact of increased use of diesel engines in vehicles of the type that have usually been gasoline powered in the past was studied in some depth by FEA. Their analysis includes review of manufacturers' estimates of the market and the production plans as well as consultant studies and independent FEA analysis. Indications are that the sales are limited by the supply of vehicles, so the projections should be quite accurate.

The economy in gasoline engines is more difficult to predict, but DOE staff has been working with consultants and manufacturers to keep current on developments. The mix of sales and the actual miles per gallon of the vehicles are variables that are most difficult to predict, but the analysis of DOE seems to consider all possibilities. The FEA data probably underestimate the effect of gasoline economy unless there are unforeseen developments that would require a new evaluation of the entire market for oil products.

Demand for unleaded and leaded gasoline was calculated as a percent of the total gasoline demand. The percentages for each type were developed by EPA who based their calculations on a study of the motor vehicle fleet, new sales and requirements for new cars. While this calculation is exogenous to the model used for the other projections, it represents a calculation that is consistent with the concepts used. It is not likely that a change in the model structure to provide separate market estimates for each type of gasoline would provide significantly different results.

The gasoline demand projections in the report have been reviewed and analyzed. DOE staff has provided FERC staff with descriptions of the

rationale and workpapers to help evaluate their published analysis. Our evaluation of the FEA/DOE development of the demand outlook is that it represents careful analytical work with a reasonable rationale for all figures shown. Alternate methods of projections could be developed, but there is no reason why the results from any other method would be inherently better than those used by the FEA.

As noted above, the FEA surveyed 17 large refiners on the adequacy of supplies of gasoline. At the same time, the FEA asked for their projections of the total market demand for leaded and unleaded gasoline. Fourteen of the 17 companies [1] provided such projections:

1978

Unleaded	Leaded	Total
3,125	3,980	7,105
2,570	4,580	7,150
2,273	4,909	7,182
2,650	4,550	7,200
2,500	4,700	7,200
2,475	4,770	7,245
3,200	4,050	7,250
2,300	5,950	7,250
2,466	4,829	7,295
2,780	4,550	7,330
2,714	4,621	7,335
2,530	4,805	7,335
2,647	4,706	7,353
2,660	4,720	7,380
[1]2,635	[1]4,623	[1]7,258
[2]2,600	[2]4,600	[2]7,200

1979

Unleaded	Leaded	Total
3,575	3,570	7,145
3,150	4,010	7,160
2,877	4,296	7,173
3,350	3,950	7,300
3,300	4,000	7,300
2,935	4,320	7,255
3,950	3,350	7,300
2,800	4,650	7,450
3,108	4,292	7,400
3,310	4,050	7,360
3,260	4,150	7,410
3,130	4,330	7,460
3,284	4,179	7,463
3,390	4,135	7,525
[1]3,244	[1]4,092	[1]7,336
[2]3,200	[2]4,200	[2]7,400

[1]Average.
[2]FEA.

The forecasters were not identified by FEA. They are listed by magnitude of the 1978 volume of total unleaded and leaded gasoline. The data represent forecasts prepared within the private sector, so no work sheets or back up documents are available. The arithmetic average of the forecasts is very close to the FEA projection and the range of forecasts is within about two percent of average in 1978, 2½ percent in 1979; these statistics tend to give confidence to the FEA total figures. The averages are also close to the FEA figures for both the leaded and unleaded shares of the market, but confidence in these figures cannot be as great. The range of individual estimates of unleaded gasoline runs from 14 percent below the average to 21 percent above the average in each year; the higher level of demand could cause problems. The leaded gasoline share also shows a wide range but this is not as serious since unleaded gasoline can be used in cars designed to use leaded gasoline.

One added note on demand for gasoline. Mr. Bode, Nelson Oil Co.'s attorney, pointed out that the Department of Transportation preliminary figures show higher demand for gasoline than the FEA. Department of Transportation data bases its data on state tax collections and the Bureau of Mines/Department of Energy data are based on supply disappearances (refinery output + gasoline plant output + exports ± stock changes = demand). The DOT data show larger demand in prior years than does Bureau of Mines but the trends are about the same; DOT figures quoted by Mr. Bode show the first 9 months 1977 gasoline use up 3.1 percent compared to 1976 and the FEA shows 3.2 percent growth in 1977. These different figures have been published for years; no complete ready explanation is available from either agency although DOT preliminary data probably include some fuels other than gasoline. DOT data do not balance supply with demand, a key item in this analysis, so it is appropriate that the Bureau of Mines system is used.

REFINED PRODUCT SUPPLY FORECASTS

FEA projected gasoline supply based on the outlook for refinery capacity (to process crude petroleum), catalytic reformer capacity, crude oil supply, imports and an evaluation of the impact of restrictions on the use of MMT (a manganese compound that can be used to improve octane ratings).

Refinery capacity forecasts were developed from publicly announced plans of refiners. Refinery building plans are not normally trade secrets (although the details of the plans may be); it is difficult to keep information on land purchases, contracts with construction firms and zoning and building permits from public knowledge. Figures on future capacity are usually known fairly accurately for the short range future; the trade press, the source for FEA figures, can provide good information for the forecast period in the FEA's final report.

The FEA outlook on refinery yields cannot be considered as accurate as their figures on capacity. Their analysis of refining equipment was limited to crude charging capacity and catalytic reforming capacity while there are other types of downstream equipment [3] that can affect the yields. The FEA's method of determining the combination of refinery production, imports and natural gas liquids was designed to minimize imports. A minimum level of product imports minimizes payments for oil and reduces costs to consumers. The Final Report indicates a margin or error on the supply estimate of 100 thousand barrels daily, about 1.5 percent, which seems small; the potential for larger output of gasoline, particularly, seems understated as shown in the following tabulation of data from the FEA Final Report:

CRUDE OIL INPUTS AND GASOLINE YIELDS

[Thousand barrels per day]

	1976	1977	1978	1979
Crude oil input *	13,416.0	14,600.0	15,200.0	15,800.0
Increments (vs. 1976)		+1,184.0	+1,784.0	+2,384.0
Gasoline yield *	6,121.0	6,300.0	6,300.0	6,500.0
Increment (vs. 1976)		179.0	179.0	379.0
Percent gasoline yield *	45.6	43.4	41.4	41.1
Percent gasoline yield on incremental crude oil input		15.1	10.0	15.9

*Source: FEA Final Report, table IV-5.

The percent gasoline yield on the incremental crude oil input after 1976 seems inconsistent with the history of crude processing in this country and, even without major increases in catalytic reforming capacity, it should be possible to produce more gasoline.

A more severe restriction may be the quality of the gasoline. Gasoline from straight run distillation of crude oil and from cracking and coking operations do not have octane ratings as high as output from reforming operations and from some natural gas liquid fractions. The blending of these fractions to provide an adequate octane level will be less of a problem with the relaxation of EPA restric-

[1]Since the projections were for the total market for gasoline, the absence of estimates from three respondents does not affect the accuracy of any of the projections.

[3]i.e., equipment to process the output from units that refine crude oil.

tions on use of lead in gasoline. The analysis of the gasoline quality was developed on the assumption that the average octane level of the gasoline supply will remain at about the present level. The assumption was adopted after a review of projected refinery building programs which showed that the mix of refinery equipment would not change significantly.

The refinery utilization factor as presented in the final report may also present a problem. The refinery percent utilization is shown to increase from 86.9 percent in 1977 to 88.3 percent in 1978 and 91.0 in 1979. The 91 percent utilization factor in 1979 is the highest since 1966 when runs were 91.8 percent of capacity. (In 1967, 1968 and 1969 refineries ran between 90 and 91 percent of capacity.) As noted above, the supply figures were developed to show maximum utilization of domestic refineries. In 1978 the data shows no increase from 1977 import levels but in 1979 even with operations at 91 percent of capacity additional imports will be required.

The U.S. refining industry should be able to operate at 91 percent of crude oil processing capacity, although product requirements may present problems. Refiners can change their product yields and can operate at high utilization factors but there are some physical limits on their operating options. The projected output from the refineries shows a decrease in the yield of gasoline, the product for which most refineries have been designed. This would suggest that the refinery options may be restricted. However, much of our gasoline is produced by downstream units which convert distillate and residual fuel oil to gasoline. Thus, the decline in gasoline yields may make it possible for refineries to make better use of their straight distillation facilities and to operate at high percentages of refinery utilization.

Catalytic reforming capacity was studied by FEA and they note that the supply of high octane output from reformers may be a limiting factor in gasoline supply. The U.S. refinery industry is said to have some alternative options to ameliorate the problems of gasoline supply. FEA lists: Emergency debottlenecking; crude intake changes; yield changes (although they previously noted that the catalytic reformer capacity may restrict the ability to increase gasoline production); increases in processing severity; deferral of planned maintenance or renovations; and changes in feedstock. The full potential of these options is not explored.

FEA also checked with 17 major refiners on the outlook for supply of leaded and unleaded gasoline. The data from these 17 companies show that refiners expect to be able to supply adequate unleaded gasoline but that they see a possible shortfall in the leaded gasoline in 1979. With the waiver of EPA lead phasedown, the refiners may have the option of adding lead to excess unleaded gasoline.[3]

The data presented seem to indicate that the supply of gasoline from U.S. refineries is understated by FEA although quality constraints may make the outlook less favorable than seen here. Any increase in gasoline output at U.S. refineries would require an equal or larger decrease in the output of other petroleum products. For a net importer of crude oil and petroleum products, the balancing factor must be imports and the imports must be determined by the availability abroad and needs in this country.

Foreign refining capacity shown by FEA indicates a surplus capacity that would not be taxed to meet import needs much larger than those projected in the final report. Quality might be a problem. FEA indicates foreign refineries may not be able to produce more gasoline without also producing six times as much fuel oil although foreign refineries are running considerably below capacity. The present percent yields in European refineries show that these refineries produce 3-barrels of fuel oil per barrel of gasoline, and there is probably some flexibility in their yields. Foreign refineries may even now be producing an oversupply of gasoline; some of the commenters suggest that gasoline is available outside of the United States.

In the Final Report, natural gas liquids (NGL) are held at a constant level during the forecast period. NGL supply will tend to depend upon production of natural gas which has been declining for several years. Preliminary 1977 data suggest that the decline may have been halted, but it may be unduly optimistic to project no further decline in 1978 and 1979. Any reduction in the supply of NGL would, however, probably be small and not a significant factor in the overall gasoline supply balance.

With net U.S. imports, probably flexibility of yields at both domestic and foreign refineries and the possibility of changing the import levels of all products, it should be possible to meet gasoline needs in this country without causing shortages in other products. In time, new facilities can be built to provide ample capacity to supply all needs.

The FEA has analyzed foreign crude oil supply and determined that it is adequate for the period covered. The potential world-wide crude shortage projected by the CIA for the 1980's is not covered in the Final Report.

Aside from the quality problems noted above, there may be seasonal problems. FEA estimates peak period (June-August) gasoline to exceed annual average demand by 500 thousand barrels daily in 1978 and 400 thousand barrels daily in 1979. The suppliers in 1977 managed to supply an extra 400,000 barrels daily in the summer. The excess summer demand in 1978 could be supplied by a drawdown of stocks of 46 million barrels from the 240 million barrels expected June 1 stocks. Such a drawdown is considered excessive by FEA, but some imports may be stored abroad in the first part of the year for delivery in the peak period. Seasonal problems will also depend on the vehicle use patterns that develop. Under any circumstances it will be necessary for DOE to monitor the gasoline supplies particularly during the peak driving periods.

It should be possible to manage the supplies of gasoline to meet the demand for the next two years if FEA evaluation of the world-wide capacity to produce and refine crude oil are accurate. In fact, the data that FEA presents seem to indicate a more favorable supply position than they show in the Final Report.

PRICING FACTORS

FEA has concluded that "competition and market forces are adequate to protect consumers" from inequitable price increases. Refiners have been recording unrecovered costs in "banks" when they could not charge the full ceiling price. Refiners are allowed to pass through increases in crude and other purchased raw material costs and certain non-product price increases. The past record would seem to indicate that the price restrictions do not inhibit the ability of the refiners to make profits. Even with prices below ceilings, output has increased and the domestic petroleum industry since 1971 has increased its percent return on equity. Gasoline prices at the pump have risen and the markup of gasoline price over crude costs has risen each year since 1972. From the data available, it would seem that price regulations have not saved the consumer from increasing prices nor have they restricted the industry's ability to make a reasonable profit.

Congressmen Fithian and Maguire point out that during the period of regulation, "there has never been a major refiner audit," and "there are no real accounting data . . . which might indicate exactly what gasoline costs." Until better data are available it will not be possible to analyze the benefits of price controls and allay fears that refiners have accrued excess profits during controls.

Without DOE audits of oil refiners, there can be no assurance that there

[3]Unleaded gasoline components require more input at processing units to produce a given quantity at a given octane rating than if lead is used to upgrade octane quality.

has been proper accounting for the product and non-product costs that have been added to the price ceilings. If refiners have overcharged their customers some repayment may be in order. The means of repaying customers for any overcharges and the method to flow-through any portion that would need to be passed on to resale customers and ultimate consumers has, as far as we know, not been established. A task force in July 1977 recommended to FEA that procedures for necessary remedial action on overcharges should be established. Development of such a program would take some time, as will an auditing program. The task force recommended an auditing program that will take 18-24 months. Any repayments for overcharges will clearly present a problem whether or not gasoline is exempted from price control.

One reason for an ample gasoline supply that tends to develop competition for the motorists' business may be that the refiners desire to prove that price controls are not needed. The ability of the government to reimpose controls may provide the same incentive since a reimposition of controls might be implemented more severely.

FEA forsees a continuing increase in crude oil costs with no end to OPEC price escalation during the next two years and with the crude oil equalization tax. These increases would result in comparable increases in ceiling prices for products.

The construction of additional refining facilities could also increase the cost of oil products. Refiners generally make no secret of their desires for higher prices (these are usually expressed as hopes more than expectations). They also indicate that investments in additional facilities will not occur when prices are under control. FEA concluded that "an increase in the price of motor gasoline will probably be necessary to cover capital costs for expansions in refinery capacity." Thus, there may be some increases in gasoline prices to cover the cost of a refinery expansion program if price controls are lifted and if the market will support a price rise.

The rising cost of incremental supplies of gasoline show that in the gasoline market, as with natural gas and electricity, conservation is cost effective. The consumer who reduces his consumption not only reduces his own costs but also reduces the need for high cost additional supplies and thereby helps keep costs down for everybody. Neither control nor exemption provides a means to reward the conserver.

Although FEA's findings include the statement that "competition and market forces should be adequate to protect consumers as long as motor gasoline supplies remain adequate," the record of gasoline "banks" during the past summer indicates pressures for prices to rise above maximum allowable price. The operation of banks was summarized by the Department of Justice:

> Current price regulations for gasoline allow a refiner to charge a price equal to its May 1973 price plus the increase in its product costs and certain allowed non-product costs. If a refiner is constrained by market forces from increasing its price to the allowable maximum, then it may bank the costs which it was allowed but unable to recoup. At a later date, if market forces permit a price above the ceiling, the refiner may increase its price above the ceiling by an amount such that its increased revenues for a given month are no more than 10 percent of its total bank. The bank is then drawn down by an amount equal to revenues over and above the legal ceiling price.
>
> Costs are banked for all products still under regulation. Refiners can reallocate banked costs from other products still under controls to motor gasoline. The maximum price charged by a refiner is thus the May 1973 base price plus allowed cost passthroughs plus 10 percent of the cost banks for all regulated products.[4]

DOE data on "unrecouped Costs for Refined Products for 30 Largest Refiners" show that refiners' banks for gasoline on a net basis were drawn down each month from April through August 1977 with a total drawdown of 28 percent; during the same period total banks for all products were down by 11 percent. These figures show that there were upward pressures on gasoline prices during the past summer's peak driving season and that during the four month period more revenue from refiners' sales of gasoline came from transactions at prices above the ceilings than below. August 1977 banks, however, were higher than they had been the previous year indicating that cumulative sales for the twelve months had generally been below ceilings. In September DOE reported 16 reductions in gasoline price by refiners compared to 12 increases; in August there had been 19 iuncreases and 13 reductions. With price reduction in the fall, banks may again increase.

FEA's analysis of margins for refining, distributing and retailing points out that profit margins on gasoline have not risen as rapidly as inflation; inflation was measured by the Consumer Price Index (CPI). Their analysis also points out that this has not limited the profitability of the gasoline business. Comments before the FERC panel indicate clearly that refiners, distributors and retailers all want to see their profit margins increase. Any increase in prices, however, will not come in response to changes in the CPI; price changes will reflect market conditions in a competitive market, or administrative decisions in a monopoly or oligopoly situation.

Prices of gasoline are expected to increase. FEA analysis shows no clear indications that motor gasoline prices will rise much more rapidly if exempted and estimates a one cent increase compared to controlled prices. Congressmen Fithian and Maguire, on the other hand conclude that the increase would be 3.3¢ per gallon plus the full amount of any increases in the price of OPEC oil.

Price changes for gasoline will be a function of crude oil costs, other raw material costs, operating costs and competitive market conditions. Under controls, costs will determine ceiling prices and market conditions may force prices below ceilings. Price under exemption would be expected to be the same as or higher than prices under control, if other things remain equal. As long as supplies are adequate, prices should not show much change, although summer prices may show a more pronounced peak than they do now. According to Jack Blum of the Independent Gasoline Marketers Council, "While surplus in the product market is two percent oversupply, terrible shortage is two percent undersupply. So it doesn't take much at all to trip the balance to a situation being competitive or totally non-competitive."

Wider swings in prices would seem probable under decontrol and geographic differences might become more pronounced. COET would tend to direct excess revenues to the U.S. Treasury, but would not eliminate all possibility of excess profits. Adequacy of supply will be key in determining how prices behave under exemption. The audit program should increase our knowledge about the accounting methods of the refiners and might result in setting ceilings lower than the present market prices. The method of handling any excess is not discussed by FEA or by Congressmen Fithian and Maguire who suggest that there may have been overcharges under the control program. The effectiveness of refund procedures are not known. A repayment to the Treasury might be as equitable as any other refund option, and would appear to be more effective than delaying decontrol if decontrol is determined to be proper at this time.

MARKET STRUCTURE AND COMPETITION

Gasoline moves through various channels from the refiner or importer to the ultimate consumer. FEA has identified nine categories of wholesalers and distributors and shows the percent market shares for the six who

[4] John H. Shenfield and Joe Sims, "Comments of the Department of Justice" (in FERC Docket No. EA78-1) U.S. Department of Justice, Washington, D.C., December 5, 1977, p. 14-15.

deal with ultimate consumers. There is competition of various degrees of intensity within each of these groups and there is competition among the groups as they strive to increase their sales so they may increase their profits.

FEA data on market shares show that between 1972 and 1976 when gasoline sales increased by 11 percent, the refiners' direct distribution actually declined as more business went through jobbers. The branded lessee dealers felt the largest part of this loss while refiner operated stations sales increased by two-thirds during this period. Some jobbers and retailers expressed a fear that this trend represents an anti-competitive development rather than a trend toward improvement in the distribution system. No thorough study of the causes of these trends was presented nor was there any evaluation of the likelihood of their continuation.

Under any circumstances it will be necessary for the DOE to monitor developments in the gasoline distribution system. With the amount of money involved in these operations there can be strong temptation for some parties to plan operations designed to increase market control and profit levels without providing improved service to consumers. Developments under controls indicate that some classes of gasoline marketers have not fared well. The trend toward fewer gasoline stations, each handling a larger volume probably will continue as long as the gasoline buying public demonstrates a preference for this type of service. To the extent that the gasoline market will decline as specified in the NEP and as indicated in some comments before the FERC panel it may be inevitable that some dealers will be forced out of business, and DOE surveillance can assure dealers that any attrition is nondiscriminatory.

Other Factors

IMPACT ON OTHER PRODUCTS

Exemption of motor gasoline can impact adversely on other petroleum products in three ways: (1) Decrease availability, (2) increase prices to consumers, (3) impair quality.

A decrease in the availability of other products would come if refineries increased their yield of gasoline. FEA shows that U.S. gasoline yields are expected to decline under exemption; if this is true, domestic supplies of other oil products should not be adversely affected. If gasoline prices rise and gasoline sales decline (in response to higher prices) U.S. gasoline yields may decline even faster than shown in the FEA studies. Thus, supplies of other products will benefit. Supplies from foreign sources to supplement U.S. refining output should not be impaired by exemptions. Foreign refineries are not running at capacity and they may be faced with an oversupply of fuel oil during the near term future. Thus maintaining an adequate supply of products other than gasoline does not seem to pose a problem.

A minimal, if any, impact of gasoline exemption on the price of other products seems likely. If market conditions limit prices to the same level as under control, the same price pressures would impact on other products. If gasoline prices rise there would be less necessity for refineries to recoup their costs from other products (although it is not likely that any increase in gasoline price would be large enough to result in a decrease in price for other products.) Competition between gasoline and diesel oil or LP gas for the motor fuel market is not expected to have a major impact on the prices of the products because the existing vehicle fleet cannot switch from one fuel to another.

If gasoline yields increase, and output of other products at U.S. refineries decreases, a larger percent of higher priced imports of other products might force prices up. However, as pointed out in our analysis of supply (supra), FEA looks for a decrease in gasoline yields and thus there would seem to be no reason to look for any impact on prices of other products at this time.

The quality of other products could be affected if there was a change in the feedstock or a change in the operations at refineries. New equipment or modification to existing equipment could also affect product quality. The FEA analysis of the outlook for new equipment does not suggest any change in the quality of product. Nor have any commentors suggested any change in quality.

Supply, prices, and quality of other products may change during the next two years, but there is no indication that any such changes will be a result of exemption of motor gasoline from price control.

IMPACT OF EXEMPTION ON THE ECONOMY

The impact on the economy from the exemption of motor gasoline from price controls will depend in large part on the magnitude of any price change that follows exemption. FEA's analysis based on Data Resources, Inc. (DRI), quarterly econometric model of the U.S. economy shows that a 1 cent per gallon increase would have only a "quite small" effect, and a 10 cent per gallon increase in price would have a significant effect. The FEA report points out that "historically gasoline demand has been relatively unresponsive to short-term changes in gasoline prices": Their short term model shows an elasticity of 0.2 but they indicate 0.1 elasticity may also be possible.

The gasoline market in the United States of 7.2 million barrels a day is equivalent to 110 billion gallons per year. A 1 cent change per gallon would therefore amount to $1 billion and a 10 cent change to about $11 billion. Changes in gasoline prices of course, have a direct and immediate effort on the consumer price index and the wholoesale price index. Moreover, when consumers pay more for gasoline they will have fewer dollars for other purchases or investments. It is the consumer's decision of where to cut expenditures or reduce savings that will probably have the biggest impact on the economy.

The FEA analysis uses an econometric model and assumes a predetermined behaviour by consumers; the reliability of the conclusions depends upon the assumptions that are built into the model.

If consumers as a group view the changes in gasoline prices as being permanent or long lasting there may be some changes in behavior patterns. We have seen in the recent past a notable interest in the demand for small cars and energy efficient cars. U.S. manufacturers are producing more small cars to meet this market and also producing diesel-engined passenger vehicles for passenger use, an option that was not considered several years ago. As manufacturers respond to their view of consumer demand supplies and marketing pressures will change.

Several possible variances to the FEA figures therefore suggest themselves:

1. Use of small automobiles in excess of FEA expectations.
2. Increased reliance on public transportation.
3. A decreased use of motor vehicle for recreational purposes.

Any of these developments, all of which are energy efficient, would result in different conclusions than those shown by the FEA.

In the past the small economy car was largely an imported car. Today the United States is manufacturing more of these. As the dollar falls against foreign currency the American products become more viable. An increased demand for American small cars could lead to expansion for the State of Michigan rather than the decline in economic activity shown by the FEA.

An increase in the use of public transit facilities would probably require improved service and more busses and subway cars. To the extent that public authorities pursue this option, and provide good reliable service without excess fare increases, we may see a decreasing reliance on automobiles and an increased use of public transit in urban areas. This development could also decrease the demand for auto-

mobiles with the adverse impact on Michigan projected by FEA. There would, however, be an increased demand for busses and other public transit vehicles which could more than offset the decline in private cars, at least in the short run.

A decrease in the use of vehicles for recreation would have the impact of decreasing the demand for gasoline and for automobiles without any significant increase in demand for any other product except perhaps bicycles.

Each of these behavior patterns could improve the nation's energy efficiency. American consumers by any of these choices would reduce the demand for gasoline thereby decreasing our need for imports of crude oil and products. Any reduction in oil imports will improve our balance of payments. The impact of improved balance of payments could have a beneficial impact on the economy that might more than offset the adverse effect of the increased gasoline price.

The economic impact of the increase in gasoline price will be influenced not only by consumer decisions but also will be affected by state, federal and local government decisions concerning the use of the motor vehicles.

PUBLIC POLICY OBJECTIVES

In addition to the analysis of the market behavior, section 4(b)(1) of the EPAA requires, as noted above consideration of: (A) Public health, (B) public services, (C) agriculture, (D) petroleum industry competition, (E) crude oil allocation, (F) oil distribution, (G) mining, (H) economic efficiency, and (I) minimizing economic distortions.

In the FEA report and the comments, most attention was given to section 4(b)(1)(D) concerning the preservation of an economically sound and competitive petroleum industry. A large portion of the written and oral comments to the FERC and to the FEA addresses this matter. Frequently this topic was expanded to relate to matters of equitable distribution of oil products, efficiency and minimizing economic distortions in the oil industry. These problems were considered by FEA and the proposed special rule No. 4 was designed to avoid the potential adverse impact of instantaneous complete removal of controls.

The matters of public health, public service, agriculture, crude oil distribution, and mining were not specifically addressed by FEA and only a few of the commentors suggested they need to be considered. These "minor" (In terms of space devoted to them in the record) considerations are discussed here before the review of the more controversial policies of special rule No. 4.

Section 4(b)(1) (A) relates to the protection of public health, safety, and welfare and (B) to maintenance of all public services. FEA did not cover these items; the States of Vermont, New Hampshire, and Maine, however, expressed concern that public service, most especially ambulance service, could be adversely affected. State set-asides were suggested as a means of avoiding serious consequences that could occur.

Several letters to the FERC and FEA mentioned socioeconomic problems connected with higher gasoline prices. These letters, however, did not indicate the significance of gasoline prices in the overall problems. Undoubtedly there are situations that will be adversely affected by an increase of 1 cent per gallon but there is no indication that gasoline prices are the best means to alleviate the socioeconomic problems throughout the country.

Section 4(b)(1)(C) relates to the maintenance of agricultural operations. This, again, was not specifically analyzed by FEA. One commentor, Western Farms Association of Seattle, Wash., expressed the fear that under exemption the supplier will pull out of the low-density markets where their members operate and that gasoline prices to them will rise as compared to the rest of the Nation. Since farm product prices are not always immediately responsive to farmers' costs, the Western Farmers Association fears that its members will suffer financial losses and/or be forced out of business. They therefore recommend against exception at this time. The National Council of Farmers Cooperatives, on the other hand, sees no major problems that will impact on farmers because of the exemptions. The Western Farmers Association problems are similar to those raised by some retailers. Generally the retailers advocated protection by modification to special rule No. 4.

Allocation of crude oil (section 4(b)(1)(E) and mining, (section 4(b)(1)(a)) were not mentioned in the record in this Docket. FERC staff review of the proposed exemption indicates that the public interest determination will not hinge on these factors.

COMMENTS ON THE EXEMPTIONS

Although there are two proposals, one to exempt motor gasoline from the mandatory petroleum allocation regulations and the other to exempt that product from the mandatory petroleum price regulations, the commentors generally treated them as a single proposal to decontrol motor gasoline from government regulation. And the few commentors who treated the two proposals separately appear to concur that there is an interrelationship between allocation and price and, as a result, the proposed exemptions should be adopted or rejected together.

The comments and oral presentations to the FEA and DOE largely favor exempting motor gasoline from government regulation. And only a few in the industry flatly oppose it. As is discussed below, the level of support for the exemptions varies according to the possible and/or probable adverse effects of decontrol upon the particular interests represented by the speaker.

Those commentors who address the matter acknowledge almost universally that government controls were essential to their business survival during the oil embargo which was imposed in October 1973. But with the passage of time, and the demonstrated adequacy of motor gasoline supplies subsequent to the end of the embargo, most commentors agree for a variety of reasons that the existing controls have outlived their usefulness and should, therefore, be removed. Others, however, favor the continuation of controls because of their apprehensions of adverse effects on their own operations. But, as indicated, most commentors would remove controls and would mitigate such adverse effects through one or more transitional protections, such as special rule No. 4. Of those who commented on the subject, a strong majority appears to advocate the development of standby controls which can be implemented quickly in the event of another gasoline shortage. Special rule No. 4 and other protective measure are discussed below.

Within the motor gasoline industry, the refiners favor the termination of existing controls. They contend that the regulations do not allow an adequate return on capital investments or processing technique improvements and do not permit them to make new marketing commitments. They claim, therefore, that existing controls operate as a disincentive to capital investment and that, as demand increase controls will lead to future shortages of petroleum products. And they claim that existing controls are burdensome and result in unnecessary paperwork, a criticism in which the wholesalers and retailers join. In fact much of the support for the exemptions is the result of frustration with the existing regulations. As one retailer group said, "We would prefer to take our chances with whatever remains of a free market than with the existing system of controls."

Two groups of terminal operators, who occupy the first step in the distribution of motor gasoline, favor decontrol. While one of the groups (whose members are primarily fuel oil distributors) believes that supplies of motor gasoline will remain adequate and favors decontrol as proposed, the

other group appears to be apprehensive of a shortfall in 1979 and states that it favors exemption only if independent terminal operators are afforded an opportunity to import competitively priced gasoline.

At the wholesale distribution level, most jobbers and consignees are in general agreement that controls should be ended. They cite figures indicating that during the period of controls numerous retailer-customers have gone out of business, that refiners have increased their direct retail gallonage and bypassed them, and that independent marketer margins are at an all-time low. Other wholesalers, however, are apprehensive of an immediate loss of supplies and of trends toward the elimination of commission marketers and, therefore, they oppose decontrol until the enactment of the Petroleum Marketing Practices Act (H.R. 130, commonly known as the dealer day in court bill).

At the retail distribution level there is a general concurrence that motor gasoline should be exempted. But the level of support and arguments made for decontrol depend to a great extent upon the particular situations of the retailers who are speaking. And the comments range from strong support of the exemption, to support with added protections, to support only with the adoption of specified protections, some of which would appear to frustrate a return of the competitive marketplace which, in turn, is generally believed to be the major benefit of exemption. Some retailers have written to the FEA and the Commission opposing any change from existing controls.

Branded lessee dealers ordinarily have a single source of supply and, conversely, are not free to shop for surplus product at a price. The vast majority of their spokesmen seem to consider the Petroleum Marketing Practices Act essential for the survival of most of these dealers. They cite FEA figures showing that their number has declined 34.8 percent from 112,000 in the first quarter of 1972, to 73,000 in the fourth quarter of 1976. Such retailers claim that they are caught in a market squeeze for survival between their increased operating costs, particularly their increased rents by their supplier-lessors, and the cutthroat price competition of their nonbranded and private branded competitors who sometimes sell product at retail at prices which are at or below the wholesale prices at which the branded lessee dealers purchase the same product.

A majority of wholesalers and retailers appear to agree that in periods of adequate supply, as have been experienced since the lifting of the 1973 embargo, the allocation regulations have been more harmful than beneficial. Suppliers are required by the regulations to reserve base period (1972) allocation volumes for customers who they know, because of changed conditions during the 4 years of control, will not lift those volumes. As a result suppliers cannot and, therefore, will not enter into new and/or expanded supplier-customer relationships. And as a further result, both wholesalers and retailers contend that the allocation regulations stifle competition.

A number of persons and firms at all levels of the motor gasoline distribution system see themselves as being hurt, or as possibly being hurt, by the removal of controls. The reasons vary, but a major factor seems to be that under controls the motor gasoline industry has not responded as rapidly as it might have to changing market conditions. Accordingly, there is considerable apprehension within most segments of the industry that when the thaw in controls begins, numerous changes will come about within a relatively short period of time. This may be generally disruptive of the marketplace and could be financially harmful to some in the industry. But a large part of the industry has expressed its general disenchantment with controls and its preference to take the risks which are inherent in returning to an unregulated market.

Special Rule No. 4

TRANSITIONAL PERIOD PROTECTION

FEA did not expect supply dislocations to occur as a result of motor gasoline exemption but did design special rule No. 4 as a safeguard against unforeseen supply dislocations. This proposal was not covered in the FEA analysis, but was the subject of considerable comment.

The comments on special rule No. 4 point up the main concerns that are felt about the exemption proposal. Price controls and allocation of gasoline since 1974 have restricted and possibly distorted normal market development even though gasoline supplies have generally been adequate. As each marketer of gasoline has tried to maximize his profits, the restrictions have been, in some cases, a protection against predatory practices. The larger companies with larger administrative and legal expertise have been better able to cope with the problems and many wholesalers, jobbers, and retailers fear that their supplier are thus able to expand downstream and put them out of business. Large refiners seem to be the main worry, although there is some concern about the small refiners who benefit from certain special treatment.

CONCERN ABOUT COMPETITION FROM REFINERS

Concern has been voiced that suppliers would effectively bankrupt their customers by one of four methods:

1. *Refusal to provide products.* A sizable number of retailers (and wholesalers) are apprehensive that they will lose their supplies with decontrol. Some have been told by their suppliers that they (the suppliers) intend to withdraw from particular market areas. Spokesmen for dealers who consider this a threat seem to believe that an abrupt pull-out must be avoided and that a 2½-year phaseout is appropriate.

Other retailers have been told by their suppliers that they (the suppliers) intend to terminate their relationships with the particular retailers at the earliest practicable date. Such retailers generally favor special rule No. 4, usually with modifications, and/or a State set-asided program. Still others who are apprehensive of losing their supplies notably nonbranded independent marketers, favor the crude oil equalization tax and access to gasoline imports.

There is also the fear that certain established categories of customer will be abandoned. Marketers falling in these categories also want time protection and they want the option to transfer to other categories that will continue to be supplied.

Another concern is that suppliers will abandon deliveries to small full-service stations and concentrate on fewer high volume large stations on Main-traveled roads. These stations frequently require investment beyond the financial resources of the lessee dealers and owners of small stations. Time is required for these dealers to adjust.

The concern over abandonment of supplies is felt most directly by lessee dealers—operators of service stations who lease their stations from their suppliers, and who sell products under his trade name. Since they have no equity in the land or station they cannot go to a new supplier, and they have no vested rights that give them priority consideration at any new locations. It has been proposed that if service is to be discontinued, these dealers be given options to buy the station they now operate.

Those expressing concerns over abandonment of supply usually conceded the suppliers should have the right to maximize profits. They only want a guarantee that they will not be thrown out of business without reasonable chance to relocate, or to arrange new supplies.

2. *Direct marketing by refiners in low-cost, high-volume stations.* Throughout the testimony there appears a concern that the refiners are planning to increase their direct marketing operations by opening new efficient service stations. These company owned and operated stations would get best locations and best treatment. Marketers fear refiners are using their

profits to finance expansion into gasoline stations rather than to expand refinery operation. Some have suggested that shares of output be frozen to the present proportion by class of customer and others (fewer) have suggested that refiners should be legally excluded from direct marketing. Dealers feel some protection is needed lest they be driven out of business by stations owned and operated by refiners. They point out that if they are out of business the refinery owned stations will be able to charge monopoly or oligopoly profits.

3. *Charging prices that make it impossible to make a profit.* Some dealers maintain that refiner-suppliers are increasing their participation in direct marketing operations and that they subsidize the operations of their new gasoline stations. Pump prices at these stations are alleged to be below the price which the independent station is charged. In order to avoid being forced out of business by what they consider discriminatory price practices, some wholesalers and retailers ask that prices of gasoline be exempted from controls but that the price differentials between classes of customers be maintained. Along this line, Continental Oil Co. has suggested that "component pricing could be implemented, which allows a marketer an opportunity to select a supplier because of the service and prices he offers."

4. *Adding hidden charges to the cost of gasoline.* Dealers complain that they will be charged for maps, a traditional courtesy at service stations, and that they will be charged for use of credit cards. Refiners have not denied that these steps are under consideration. In a free market this might be a cost item that would be offered by some suppliers and not by others depending on the benefits to the ultimate customer, but dealers fear that these steps during a transition period will put them at a disadvantage with company operated and discount competitors. To a lesser degree, customary business practice regulations are requested by many branded dealers (both lessee and operator owned) who are apprehensive that changes in credit terms and credit card practices will result in an additional squeeze upon their margins.

OTHER CONCERNS

Some refiners expressed a fear that exemption will be subject to conditions that will cause confusion and extra paperwork and that there will be restrictions that impair the ability of the free market to react and give the most efficient determination of supplies and prices. Some trade associations and individual wholesale and retail marketers also express a fear that conditions attached to the exemption will work against them and believe it would be better to go to a completely free market.

Most State offices and many marketers expressed a belief that State offices would be more perceptive of the needs of the market and therefore they should be a key element in any transition scheme. Emergency supplies to meet problems that arise could better be handled at a local level. State set-asides are considered by some to be duplicative of the protection given by S.R. 4, but some feel that it should be provided in addition.

PRICE MONITORING AND EMERGENCY PLANS

The refiners generally advocate that no monitoring of prices be undertaken, and most specifically that there be no established trigger to reimpose controls. They maintain that this would have the effect of continuing controls in a veiled manner. Emergency plans are recommended by more of the marketers; some want the present system as a standby, but most seem to imply that a new pricing and allocation system with a new base is needed. Although most members of the industry oppose monitoring of their own operations, it is generally recognized that some record of prices and price changes is needed. Most commentors advocate avoidance of excess paperwork.

Price monitoring is generally not considered to be a good means to determine when controls may again be needed because processing of reports takes too long. Wholesaler, retailer, or State agency complaints about problems were suggested as offering a better indication of problems, and a more timely indication that action was called for. While many of the marketers recognized a need for standby controls none seemed to advocate a fixed set of recontrol indicators. Some commentors suggest that the exemption cannot be considered without the monitoring plan.

LEGISLATION

A number of retailers and some wholesalers indicated opposition to exemption until certain guarantees were incorporated into the law. One of the most frequently expressed "needs" was passage of HR 130, which would give dealers some protection against a complete cut-off of supply. Many consider this is the most important single feature.

The crude oil equalization tax was also considered important by some. It is also considered important that imports be available to the wholesaler so that they have an alternative to domestic refined products in a rising market.

PRICE DIFFERENCE BETWEEN LEADED AND UNLEADED GASOLINE

In addition to questions surrounding the supply of unleaded gasoline, a number of comments were directed at the existing and potential price differential between leaded and unleaded gas. The Administrator of the Environmental Protection Agency commented to FEA in connection with its August 9 proposal, agreeing with the central finding of the report that current conditions do not warrant the continuation of price and allocation controls and that no shortage of gasoline is likely to occur in 1979. However, he indicated concern over the spread between the prices of regular and unleaded grades of gasoline and asked for an analysis of the potential impact of decontrol on the relative prices of unleaded and leaded grades. He further urged that provision be made for the reimposition of price controls should the spread between these two grades increase significantly.

In a statement made by EPA at the public hearing on November 30, the concerns were discussed more specifically. In general, automobiles since 1975 have used catalytic converters to meet air pollution control standards. Because lead, which is added to gasoline to boost the octane rating, destroys the effectiveness of these converters, EPA required the use of unleaded gas in vehicles using them. In addition, EPA requires cars requiring unleaded gas be equipped with a filler inlet restricter. Only the smaller nozzles which are required on pumps dispensing unleaded gas fit these cars.

It is illegal for a retailer or a fleet owner to introduce leaded gasoline into a car requiring unleaded. Because of this and the practical difficulty of "switching" if the small nozzles are on unleaded gas dispensers, and small price differential between leaded and unleaded gasoline is not thought to provide sufficent incentive for the customer to purchase leaded gasoline for use in cars requiring unleaded. However, as the price differential increases, it is feared that the incentive to save the difference in price is likely to lead to more widespread "switching."

EPA admittedly does not have reliable information about the rate at which "switching" may be occurring although it has violations, especially among fleet owners. A recent survey revealed that about 10 percent of those automobiles required to use unleaded actually refueled with leaded. EPA has little confidence in the 10 percent figure and admits it could be higher or lower.

EPA indicates it is attempting to enforce its unleaded gasoline regulations by initiating an effort to prohibit removal of the filler inlet restricters and by an educational compaign by major gasoline marketers to notify their customers of the retailers legal liability. However, they state that no reasonably sized enforcement program can be completely effective at 300,000 gas

stations if there is a substantial incentive for noncompliance. They ask that in the event of removal of existing controls, institution of controls on retail price differentials between leaded and unleaded should be considered.

In a few other presentations similar concerns were expressed. And some said the problem was sufficiently serious that an environmental impact statement should be prepared. The Office of General Counsel believes that the procedural question concerning the EIS is one that must be resolved by the Secretary.

A large number of arguments against a mandated price differential were presented, particularly by larger refiners. The basic arguments are: (1) EPA's request to the Commission (or the Department) to implement price controls in this area is an abrogation of its own responsibility to enforce its own regulations; (2) The problem of catalyst abuse, particularly in the early stages was predictable; the existence and scope of self-service gasoline stations was known, the price differences between gasoline grades and brands is not new; (3) intense competition for customers will work in this area as well as it is now working in the leaded area; (4) EPA should in addition to enforcing existing law, seek new authority, if needed, to cause automobile manufacturers to make it impossible to use leaded gasoline in converter equipped cars; (5) it is not legal to retain or institute controls only on price differentials; (6) the problem is one that should be solved by periodic mandatory inspection of motor vehicles and consumer education.

There is general agreement that leaded regular is the price leader in many markets now. As the use of unleaded gasoline increases, as it will by about 9 percent per year, competition should occur in both leaded and unleaded. Thus, wholesalers or retailers who attempt to unjustifiably raise the differential for unleaded gasoline will be curtailed by competition. Some commenters noted that even now, although there are some high differentials, many retailers continue to offer unleaded gasoline at differentials of 2 to 3 cents per gallon. In summary, the argument against controls in this area is that the gasoline consumer has demonstrated mobility in seeking the best bargain and will continue to do so. Price has always been a major factor in the consumers' decision on where to trade, and those who wish to find unleaded gas will seek out the lowest price. Accordingly, the most effective regulator in this area will be competition.

It was also noted by many that the problem of the differential began in a period of price control and continues under controls. If the price of unleaded is restrained there may be no incentive to increase capacity to refine it. In addition to raising some of the arguments set forth above, the Council on Wage and Price Stability believes that EPA proposal could, if implemented, cause substantial cost increases in leaded gasoline. It considers this to be a regulatory proposal requiring an economic analysis of the costs to be incurred.

Conclusions and Recommendations

After reviewing the proposals and the record of this proceeding and consulting with the Secretary of Energy, the Commission has reached the conclusions set forth below.

The Commission concurs in the proposals of the Secretary that would exempt motor gasoline from the mandatory pricing and allocation regulations. It should be noted that no alternative system of price or allocation controls was proposed or discussed in this proceeding. Therefore the questions before the Commission was limited to whether or not the existing system of controls should be continued.

The existing system of controls was divised to cope with an emergency and is not necessary nor effective in a period of adequate supply. Moreover the Economic Regulatory Administration agrees that the present system of allocation controls would not be effective in the event of a supply interruption, and should be restructured for use as a stand-by system.

During this proceeding there was virtually unanimous agreement that the present system of allocation controls is overly complicated, difficult to understand, expensive to comply with, and extremely burdensome, particularly to the smaller businessman.

With respect to price controls, data indicates that in the present market, gasoline is generally being sold below ceiling prices. The need for price controls is of course, heavily dependent on the forecast of supply and demand. The projections by DOE indicate that no serious shortage of gasoline is expected, with or without exemption from controls. Prices will probably increase in either case due to higher costs of crude oil and necessary increases in non-product costs. Assuming an adequate supply of gasoline, the extent to which the increased costs will be passed on to the consumer will be dictated, as it is now, by market conditions.

Information in the record indicates that exemption from controls may encourage refiners to increase their capacity. It seems relatively clear that the lack of investment in added capacity over the past years is at least partly due to the inhibiting nature of price controls. Accordingly the Commission agrees with the Secretary's conclusion that to the extent supply is limited by lack of refining facilities, exemption from controls can only be a favorable factor, although there is no guarantee that exemption will in fact spur new investment.

The DOE projection of the demand for gasoline is necessarily dependent on developments which cannot be predicted with certainty. Although some questions regarding the analysis were raised and some alternate statistics presented, there was no competing comprehensive supply-demand analysis presented. The Secretary's analysis is a reasonable one and seems to bear up under examination. Accordingly the Commission concurs with the Secretary in relying on the analysis and believes that the required statutory findings which are related to it, are reasonably made.

The widespread dissatisfaction with the allocation system does not mean there is agreement that the system should be terminated immediately. A transitional program is favored by most marketers downstream of the refiners and appears to be necessary to insure that there will be a reasonable period in which to readjust supplier-purchaser relationships. There were a number of alternatives to the Secretary's one year transition program, i.e., Special Rule No. 4. Some groups favored a longer period, some more elaborate and possibly unadministerable systems, such as guaranteeing marketers a profit. Some suggested, and the Commission agrees, that Special Rule No. 4, should be modified to increase the protection given to marketers by deleting the requirement that the purchasers must take supplies in any three month period or lose their entitlements. The deletion of this provision, paragraph (f) of the Rule, should insure that those marketers who make good faith efforts to obtain new long term contracts, will have access to supplies for the full transitional year. Accordingly, the Commission concurs in the adoption of Special Rule No. 4 with the recommendation pursuant to § 404(b)(2) of the DOE Act, that paragraph (f) of the Rule be deleted.

In the course of its consideration of this matter the Commission noted several areas of concern. Although no recommendations for changes under § 404(b)(2) were made with respect to these concerns, they were brought to the Secretary's attention.

The following correspondence sets forth the Commission's preliminary findings and concerns, the Secretary's response thereto, and the final recommendations of the Commission.

By the Commission.

KENNETH F. PLUMB,
Secretary.

APPENDIX A

FEDERAL ENERGY REGULATORY COMMISSION, WASHINGTON, D.C.

Hon. JAMES R. SCHLESINGER, *Secretary,* Department of Energy, Washington, D.C.

FEBRUARY 3, 1978.

DEAR MR. SECRETARY: By letter of October 19, 1977, you forwarded to the Federal Energy Regulatory Commission (Commission) proposed amendments to the regulations under the Emergency Petroleum Allocation Act (EPAA) that would exempt motor gasoline from both the Mandatory Petroleum Allocation Regulations and the Mandatory Petroleum Price Regulations. You also forwarded proposed "Special Rule No. 4," which would establish a transitional motor gasoline assignment program to be in effect for one year following the exemptions, if the exemptions become effective. The Commission is considering the exemption amendments pursuant to section 402(c)(1) of the Department of Energy Organization Act (DOE Act) and Special Rule No. 4. under Section 404(a) of the DOE Act.

Based on our review of this matter, the Commission has arrived at the following preliminary conclusions: the methodology used to evaluate this issue and on which the proposed amendments are based is reasonable, and the findings are appropriate. Accordingly, the Commission, by this letter, advises you that we have made the tentative determination to concur in the proposals to exempt motor gasoline from the pricing and allocation regulations without making any "recommendations" as contemplated in sections 404 (b) and (c) of the DOE Act. With respect to Special Rule No. 4, the Commission concludes that the protection for marketers, to be derived from the one year continuation of the supplier-purchaser relationship, is necessary. The Commission does, however, make a formal recommendation that Paragraph (f) of Special Rule No. 4 be deleted. The Commission believes that purchasers need the assurance of continued access to a source of supply for one year. The three month "use it or lose it" feature of Paragraph (f) appears to be unnecesarily restrictive, mantle of protection deficient. Therefore, the Commission recommends that you substitute for Paragraph (f) a requirement that the purchaser, upon receipt of notification from its supplier that the supplier-purchaser relationship will be terminated, notify said supplier whether it wishes to maintain its right to receive its allocation during the one year period following exemption. Such a requirement would permit the supplier to better utilize its available supply yet provide the purchaser maximum flexibility for utilizing the one year assurance of continued access to a source of supply. The Commission intends to make this recommendation within the contemplation of Sections 404(b) and 404(c) of the DOE Act.

The Commission herein solicits your responses on these preliminary determinations. Your comments will fulfill our obligation to consult with the Secretary prior to issuance of our final recommendations as required under Section 404(b) of the DOE Act.

In addition, the Commission wishes to call your attention to three areas of concern, with regard to which we look forward to receiving your views.

In the proceedings before the Commission a number of participants stated that enactment of H.R. 130 (Dealer Day in Court legislation) was a necessary prerequisite to exemption. This legislation, which provides additional protection to franchised dealers, is of particular importance to major branded dealers. While the Commission makes no recommendation relating to this pending legislation, we wish to bring to your attention the concern expressed in this regard by several of those who participated in our proceedings, especialy since one of the policy objectives in Section 4(b)(1) of the Emergency Petroleum Allocation Act is to "* * * preserve the competitive viability of * * * branded independent marketers."

A second area of concern relates to establishing a monitoring program to review the price of motor gasoline subsequent to the exemption. A number of participants had views on this subject, ranging from assertions that the proposed exemption could not be evaluated apart from the monitoring system to allegations that no monitoring system is necessary. It is our understanding that the Secretary is presently developing a comprehensive program to monitor gasoline supply and prices at each of the levels in the distribution chain. The Commission recognizes that such a system might constitute a burden, particularly on the small businessman, but we conclude that the monitoring system would be useful to measure the impact of decontrol, and to provide a basis for a timely response should the market respond differently than predicted. Accordingly, the Commission wishes to note its support for your effort to develop and implement a reliable gasoline supply and price monitoring program at each level of the industry.

Finally, some participants expressed concern over a possible increase in the price differential between leaded and unleaded gasoline. Although it appears likely that competition for the unleaded user's business will keep the price of unleaded gas from rising disproportionately, the Commission believes that this price differential should be closely monitored. We would also suggest that steps be taken in cooperation with the Environmental Protection Agency to develop contingency responses to deal with any unjustified increase in this price differential.

As stated above, the preliminary determinations and views of the Commission included in this letter are forwarded to you for consideration. As required by Section 404(b), the Commission will await your response before taking final action with regard to the proposed exemption and Special Rule No. 4.

By direction of the Commission.

CHARLES B. CURTIS,
Chairman.

APPENDIX B

DEPARTMENT OF ENERGY,
Washington, D.C., March 7, 1978.

Hon. CHARLES B. CURTIS,
Chairman, Federal Energy Regulatory Commission, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of February 13, 1978, concerning the tentative determination of the Commission to concur in the proposals to exempt motor gasoline from the Mandatory Petroleum Allocation and Price Regulations. As part of the consultation process contemplated by Section 404 of the Department of Energy Organization Act, Pub. L. 95-91 ("DOE Act"), you solicited my response to the Commission's preliminary determinations, as well as to other concerns the Commission has in this matter, before issuing the final recommendations permitted by Section 404.

With respect to Special Rule No. 4, the proposed transitional assignment program for the post-exemption period, you advise that the Commission has tentatively agreed that such a program is necessary for a one year period. However, the Commission intends to recommend formally the deletion of paragraph (f) of the proposal, which would have required wholesale purchasers to continue purchasing their full allocation entitlement from their base period supplier in order to remain eligible for relief under the Special Rule. Instead, the Commission recommends that a provision be substituted whereby a purchaser receiving a notice from its base period supplier terminating a supplier/purchaser relationship would be required to notify its base period supplier that it wishes to maintain its right to receive its allocation during the one year period following exemption.

I accept the tentative recommendation that paragraph (f) of the proposed Special Rule be deleted in order to amplify the protection to be afforded marketers. However, rather than

inserting the substitute notification provision the Commission suggests, I suggest as an alternative that paragraph (b) of the proposed Special Rule be changed by deleting the requirement that purchasers apply for continuation of their existing supplier/purchaser relationship at least 30 days before a termination would be effective. This change would permit continuation or reestablishment of the relationship at any time during the year following the effectiness of the exemption. This would provide even greater assurance that purchasers would have "continued access to a source of supply for one year" than the Commission's own proposal, would give the supplier greater flexibility in utilizing its available supply, and would provide a more gradual transition into a decontrolled market. I therefore respectfully request that the Commission consider this alternative as its final recommendation. The proposed language of this alternative is enclosed.

You also noted three other matters, not the subject of Commission recommendations, raised by public comments received by the Commission. First, you note the importance of the enactment of pending Federal legislation relating to dealer franchise protection (H.R. 130, the "Dealer Day in Court" bill) to major branded dealers. The Department strongly supports franchise protection legislation for motor gasoline dealers that would protect them from arbitrary loss of franchises. You also noted Commission support for a reliable gasoline supply and price monitoring program at each level of the industry and a concern over possible increases in price differentials between leaded and unleaded gasoline following decontrol. We expect to develop and implement an appropriate price monitoring system that would, among other things, monitor the leaded-unleaded price differential. As you suggest, we intend to consult with the Environmental Protection Agency in the development of any contingency measures that may be necessary to prevent or correct any unjustified increases in the differential. We are reviewing specific monitoring alternative, and intend to avoid undue burdens, particularly upon small businesses.

Sincerely,

JOHN F. O'LEARY,
Deputy Secretary.

Enclosure (see Appendix C for identical enclosure).

APPENDIX C

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, D.C., March 29, 1978.

Hon. JAMES R. SCHLESINGER,
Secretary, U.S. Department of Energy, Washington, D.C.

DEAR MR. SECRETARY: By letter of October 19, 1977, you forwarded to the Federal Energy Regulatory Commission (Commission) certain proposed amendments to the regulations under the Emergency Petroleum Allocation Act (EPAA) that would exempt motor gasoline from both the Mandatory Petroleum Allocation Regulations and the Mandatory Petroleum Price Regulations. You also forwarded proposed "Special Rule No. 4" which would establish a transitional motor gasoline assignment program to be in effect for one year following the exemptions, should the exemptions become effective. These actions were predicated upon your findings that,

(a) The exemptions are consistent with the public policy objectives in Section 4(b)(1) of the Emergency Petroleum Allocation Act;

(b) Motor gasoline is no longer in short supply and that the exemption will not have an adverse effect on the supply of oil or other products; and

(c) Competition and market forces will provide adequate protection for the consumer and the exemption will not result in inequitable prices for any class of user.

The Commission has considered the proposed exemptions pursuant to Section 402(c)(1) of the Department of Energy Organization Act (DOE Act) and Special Rule No. 4 under Section 404(a) of the DOE Act.

Since this is the first such review under the DOE Act, the Commission prefers first to outline its understanding of its legal responsibility under that statute. Since the statute also incorporates portions of the Emergency Petroleum Allocation Act and the Energy Policy and Conservation Act, we have undertaken a detailed review of the legislative history of the EPAA, the pertinent amendments to the Act, and the history of the Energy Policy and Conservation Act.

The DOE Act intended to vest in a collegial body, independent of the Secretary, major energy pricing and licensing matters, including "energy actions." The law also provided, however, that the Secretary retain the authority to propose energy actions, the final authority to submit such actions to Congress and the responsibility for implementation of the pricing and allocation programs. The Commission has concluded that the insertion of the Commission in the process leading up to the submission of a proposed exemption to the Congress did not change the basic nature of the exemption process. The DOE Act continues to place reliance on the expertise of the Secretary and his employees and contemplates the Commission according due weight to the judgment of the Secretary in these matters.

In performing its responsibilities with respect to the proposals at hand, the Commission has reviewed the record of the proceedings before the Federal Energy Administration as well as the record before the FERC. The Commission recognizes that the law does not require that a record be developed to support those findings which the President must make prior to forwarding a proposed exemption to Congress. More specifically, although procedures applicable to informal rulemaking were observed, there is no requirement that the findings be based on that proceeding, nor on any other record developed expressly for the purpose of proposing the exemptions. Nevertheless you have provided us with a detailed analysis of the information supporting your conclusions with regard to the exemptions. This, together with the written and oral comments generated by these proposals, forms a substantial record on which the Commission has relied extensively.

We wish to emphasize that the question presented to the Commission and the one discussed by the participants in this proceeding was whether motor gasoline should be exempted from the existing price and allocation regulations. Whether or not alternative regulatory measures would be feasible and/or desirable was not an issue raised or addressed in the record and accordingly has not been considered by the Commission.

Within this context, the Commission considered the asserted findings and the accompanying analysis. The Commission also reviewed your analysis of the potential impact of the proposed exemptions.

By letter of February 3, 1978, the Commission informed you of its preliminary conclusions regarding the proposed exemptions and Special Rule No. 4. The letter advised you that the Commission had tentatively decided to concur in the proposals to exempt motor gasoline from the mandatory pricing and allocations regulations without making any recommendations pursuant to § 404 (b) and (c) of the DOE Act.

With respect to Special Rule No. 4, the Commission notified you that it intended to make a formal recommendation that the three-month "use it or lose it" feature of paragaph (f) of the Rule be deleted. The Commission suggested that paragraph (f) be replaced by a notification requirement. The letter indicated that the Commission believed the deletion of paragraph (f) "* * * would permit the supplier to better utilize its available supply, yet provide the purchaser minimum flexibility for utilizing the one-year assurance of continued access to a source of supply."

In addition to the recommendation with respect to Special Rule No. 4, the Commission noted three other areas of

concern, viz. the relevance to this matter of H.R. 130 (Dealer Day in Court legislation) the need for a comprehensive monitoring system, and the potential price differential between leaded and unleaded gasoline.

Your response to the preliminary determinations was solicited with the understanding that the correspondence would fulfill our obligation to consult with the Secretary prior to issuance of our final recommendations.

Deputy Secretary John O'Leary's letter of March 7, 1978, has been received and reviewed by the Commission. The letter indicated acceptance of the tentative recommendation that paragraph (f) of Special Rule No. 4 be deleted, but suggests an alternative to the reporting requirement suggested by the Commission. Specifically, it is proposed to delete that requirement in paragraph (b) of the Rule that "* * * purchasers apply to a regional office for an assignment at least 30 days before a termination would be effective." With the necessary conforming changes, the suggestion would result in marketers having the right to continue or re-establish their purchaser/supplier relationship for a period of one year, if their good faith efforts to secure a different supplier failed.

The Commission concludes that the alternative suggested is a reasonable one, and is supported by the record and reasons stated in the letter. It is consistent with the Commission's intent to permit suppliers to utilize available supplies and, most important, provides purchasers maximum assurance of a continued access to some source of supply for a full year.

The Commission also notes the response to three areas of concern cited in its February 3, 1978 letter. It supports the Department's efforts to develop a comprehensive monitoring system which will include the price differential between leaded and unleaded gasoline. The Commission has reviewed the record regarding this price differential and concludes that the arguments against using the mandatory pricing regulations to control the differential are persuasive. Accordingly, the Commission makes no recommendations pursuant to § 404 with respect to the pricing of leaded/unleaded gasoline.

The examination that we made does not provide a basis for reaching a conclusion different from your finding that competition and market forces will provide adequate protection for the consumer and the exemption will not result in inequitable prices for any class of user. However, the Commission does invite your attention to the fact that some commentors expressed fear that under exemption the supplier may pull out of low density markets with some serious loss of service to rural populations. Related to this was a set of letters to FERC, and before that to FEA, which represented that higher gasoline prices would diminish various social services and increase the isolation of residents in remote rural areas. By logical extension such concerns are also related to the transportation isolation of residents in high density, low income urban areas.

It is not clear precisely what significance gasoline prices do,or the present system of allocation and price regulation does, in fact have to these matters. If any significant relationship should be found, it would influence mobility, employment opportunity and community stability. It is not clear, moreover, to what extent regulatory control with respect to gasoline would be an efficacious method of public action.

Although these matters were not well formulated or supported in the record upon which we have made this review, they merit further attention. The Commission therefore suggests that, as a part of the implementation of the decontrol proposal, the Department of Energy should undertake intensive analysis of the parameters of these problems with a view toward developing such adjustment measures as may be indicated.

In summary, the Commission after consultation with the Secretary concurs in the adoption of the proposals to exempt motor gasoline from the provisions of the mandatory pricing and allocation regulations. We concur in the adoption of Special Rule No. 4 with the recommendation that paragraph (f) of the Rule be deleted. The Commission also recommends that paragraph (b) of the Rule be changed to delete the requirement that purchasers apply for continuation of their existing supplier/purchaser relationship at least 30 days before a termination would be effective. The Commission further recommends that certain conforming changes in the Rule be made. The revised Rule, incorporating the Commission's recommendations is attached.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

PROPOSED REVISIONS TO SPECIAL RULE NO. 4, APPENDIX TO SUBPART A, PART 211, TITLE 10 OF THE CODE OF FEDERAL REGULATIONS

(Additions to proposed special rule appearing at 40920 FEDERAL REGISTER, August 12, 1977, indicated by *italics;* deletions indicated by brackets.)

1. *Scope.* Notwithstanding the exemption of motor gasoline from the Mandatory Petroleum Allocation Regulations, this Special Rule provides for the establishment of a transitional assignment program for motor gasoline for the months [————1977 through ————1978].

2. *Transitional assignment program.* Notwithstanding any contrary provisions of parts 205 and 211 of this chapter, assignments of base period supplies and base period use for wholesale purchasers of motor gasoline shall be made in accordance with the provisions of this Special Rule.

(a) No supplier/wholesale purchaser relationship in effect under § 211.9 of this part as of [————1977,] may be terminated before [————1978] by a supplier except upon written notice to the wholesale purchaser given at least ninety (90) days prior to the date on which the supplier intends to terminate the supply relationship. A termination under this paragraph (a) may only be effective at the end of the period corresponding to a base period coinciding with or following the expiration of the ninety (90) day notice period. Any such ninety (90) day period may not begin prior to [————1977].

(b) Any wholesale purchaser which has received a notice from its supplier under paragraph (a) above shall make a diligent effort to locate an alternate source of supply. If its effort is unsuccessful it may apply to the appropriate DOE Regional Office for a continuation *or reestablishment* of its [current] *most recent mandatory* supplier/purchaser relationship, [but any such application shall be made at least thirty (30) days prior to the date on which the termination under paragraph (a) is to become effective.] The applicant shall certify to the DOE that it has made a diligent unsuccessful effort to locate an alternate source of supply and shall set forth in its application (i) the name and address of its base period supplier; (ii) its base period use with that supplier for each period corresponding to a base period; and (iii) the names and addresses of other suppliers contacted with respect to the applicant's efforts to locate an alternate source of supply, the volumes requested from each such other supplier, and the dates of those contacts. The applicant shall send a copy of its application to its base period supplier.

(c) If DOE determines that an applicant has made a diligent unsuccessful effort to locate an alternate source of supply, DOE shall order a continuation *or reestablishment* of the applicant's [existing] *most recent mandatory* supplier/purchaser relationship for a period of *up to* three consecutive periods corresponding to a base period. While a continuation *or reestablishment* order is in effect, the wholesale purchaser shall again make a diligent effort to locate an alternate source of supply. If the wholesale purchaser is again unsuccessful, it may again apply for a continuation *or reestablishment* in accordance with paragraph (b) above.

(d) If DOE fails to take action on an timely filed application under paragraph (b) of (c) *filed at least 30 days* prior to the date upon which the termination of the supplier/purchaser relationship which is the subject of the application is to become effective, the supplier/purchaser relationship shall be automatically extended for a period of one (1) month pending DOE action on the application. If DOE fails to take action on an late filed application under paragraph (b) or (c) *filed less than 30 days* prior to the date upon which the [termination of the supplier purchaser relationship] *relief* which is the subject of the application is to become effective, DOE may [issue] *order* a temporary continuation [order] *or reestablishment of a supplier/purchaser relationship* for a period of one (1) month pending DOE action on the application upon a showing by the applicant of good cause for the late filing.

(e) [DOE may issue with respect to any supplier/purchaser relationship no more than three (3) continuation orders.] In no event may the provisions of a continuation order be effective beyond ————1978.

[Paragraph (f) deleted in its entirety]

3. *Non-discrimination requirement.* To prohibit any form of discrimination (including price discrimination) which has the effect of circumventing, frustrating, or impairing the objectives, purposes and intent of this Special Rule, the requirements of paragraph (b) of § 210.62 of this chapter shall continue to apply to suppliers which are subject to a continuation order under the traditional assignment program of this Special Rule, and to all suppliers which are still supplying purchasers because they have failed to give notice of intent to terminate supplies or such termination has not yet become effective.

[FR Doc. 78-9012 Filed 4-5-78; 8:45 am]

[6720-01]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Parts 521, 522, 523, 524, 525, 526, 527, 531, 532]

[No. 78-162]

FEDERAL HOME LOAN BANK SYSTEM

Proposed Reduction and Simplification of Regulations

MARCH 31, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rules.

SUMMARY: These proposed amendments would reduce and simplify the Regulations for the Federal Home Loan Bank System. As described below, unnecessary provisions would be removed, other provisions would be updated to express current Board policy, and certain delegations of authority would be made. Otherwise, the proposed amendments are not intended to change the effect of the revised sections, but only to clarify them and remove unnecessary words.

DATE: Comments must be received by: June 1, 1978.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Comments are available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, at the above address, 202-377-6440.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board proposes changes to 12 CFR Parts 521-527, 531, and 532 to reduce and clarify the language of those regulations. Except as described below, the amendments are not intended to change the meaning or effect of the amended provisions. Proposed substantive changes are as follows:

(1) Section 521.5 would indicate that Federal Home Loan Banks' (Banks') checking accounts with the Treasurer of the United States have been changed to combined accounts in Federal Reserve Banks.

(2) Section 522.6 would reflect current Board policy that Banks may declare a dividend only at the end of the year rather than twice per year as § 522.6 now provides.

(3) Section 522.13 would no longer require that proof of loss be furnished for Bank members to obtain duplicate membership certificates. The board believes such proof is unnecessary for such non-negotiable certificates.

(4) Section 522.26 would not require that a nominee for director of a Bank be informed by registered mail of his nomination, as present § 522.23(d) requires. The board believes this use of registered mail is unnecessarily expensive and time consuming. Also, the requirement in present § 522.23(b) that each Bank member in a State for which an elective directorship is to be filled be sent a copy of the regulations governing nomination and election of directors would be deleted. The Board believes Bank members normally possess copies of such regulations and providing additional copies is superfluous.

(5) Section 522.60 would permit each Bank to establish directors' fees within limits set by the Board, rather than subject to Board approval, because the Board presently limits such fees by policy rather than by specific approval.

(6) Section 522.71 would no longer require that compensation of Banks' outside legal counsel be subject to Board approval. The Board believes it has sufficient opportunity to review such compensation when it considers the Banks' budgets.

(7) The proposed amendments would delete from § 522.72(e) the provision specifically excluding from the indemnification provisions an action terminated more than one year before their adoption. The section was adopted in 1958 and such specific exclusion appears superfluous.

(8) Section 522.81 would provide for withdrawal from the "imprest fund" maintained by the Office of Finance on the signature of the Director of that Office or of another person or persons designated by the Board. Because present regulations provide for such other persons or persons to be designated by the Director, withdrawal from the "imprest fund" would be precluded in the Director's absence if no such person had been so designated.

(9) The provisions in §§ 523.10(g) (4) and (5) that time and savings deposits and bankers' acceptances of an insured bank are not liquid assets if consideration was received from a third party for making them would be deleted. The Board believes that such activity by a third party is improper but does not directly affect the liquidity of the asset.

(10) Under § 524.1(a) a Bank's board of directors would be permitted to authorize acquisition or disposal by Bank officer(s) of securities qualifying as liquidity for deposits under the Investment Policy of the Board. Present § 524.2(a) permits such authorized acquisition or disposal of securities maturing or redeemable within 13 months.

(11) Under § 524.1(c) advances to members maturing within 18 months secured by home mortgages or obligations of the United States would qualify as investments under section 11(g) of the act. Present § 524.2(c) restricts such qualification to advances maturing within 1 year. This change would conform to present Board policy.

(12) Section 524.2-2, which authorizes Banks to acquire home mortgages for the primary purpose of placing them in a trust or pool backing an issue or issues of trust certificates or other securities to be guaranteed by the Government National Mortgage Association, would be deleted. The Board believes such authority is no longer useful in view of the creation of the Federal Home Loan Mortgage Corporation subsequent to adoption of § 524.2-2.

(13) Section 524.3 would reflect that negotiated rates normally apply to in-

terbank borrowing rather than rates established by the Board.

(14) Under proposed § 524.4, a Bank's board of directors may set interest rates on time deposits without reference to a range of rates set by the Board. The Board believes Banks should have flexibility to change rates as necessary.

(15) Section 524.7 would delegate to the Director or Deputy Director, Office of the Federal Home Loan Banks, authority to approve issuers of surety bonds and require that Banks submit a copy, rather than a duplicate original, of such bonds to the Board. The Board believes this procedure will adequately insure that Banks maintain proper coverage by sound companies.

(16) Section 524.11 would reflect present Board policy, which requires each Bank to maintain a checking account with the Federal Reserve Bank of New York rather than the Treasurer of the United States.

(17) Section 524.13 would provide that accounting forms used by Banks are subject to approval of the Director, Office of the Federal Home Loan Banks, but need not be submitted and approved before they can be used. The Board finds that the large number of forms in use makes prior approval of all forms impractical.

(18) Section 525.26 would permit advances to Bank members secured by their time deposits for periods up to 5 years or the maturity of the time deposit, whichever is less. Because maturities of members' time deposits with Banks may exceed one year, the Board believes advances which the deposits secure should not be limited to one year.

(19) Part 527 would be revised to reflect that, although funds contrinue to be disbursed under that Part, applications for allowances are no longer being accepted.

(20) Subsections (b)(c)(d) and (e) of § 531.1 would be deleted because those provisions merely restate in greater detail requirements already stated in paragraph (a) thereof.

(21) Section 531.5 would be deleted because the conditions which necessitated it have terminated.

(22) Section 531.6 would be deleted because it applies to a period of time which has expired.

(23) The first sentence of paragraph (d) of § 531.9 would be deleted, and authority to approve obligations used to evidence advances to Bank members would be delegated to the Director or Deputy Director, Office of the Federal Home Loan Banks. The Board feels such terms and conditions may be adequately monitored without requiring formal Board approval thereof.

Accordingly, the Board hereby proposes to amend Parts 521-527, 531, and 532, as follows:

PART 521—DEFINITIONS

1. Amend to read as follows:

§ 521.1 Act.

The Federal Home Loan Bank Act, as amended (12 U.S.C. 1421).

§ 521.2 Bank.

A Federal Home Loan Bank.

§ 521.3 Board.

The Federal Home Loan Bank Board or any official duly authorized to act in its behalf.

§ 521.4 Creditor liabilities.

Obligations, secured or unsecured, of a member.

§ 521.5 Deposits in banks or trust companies.

Includes a deposit in another Bank or a checking account of a Bank with a Federal Reserve Bank.

§ 521.6 Home mortgage.

A mortgage on real estate in fee simple, or on a leasehold of (a) not less than 99 years which is renewable or (b) not less than 50 years from the date the mortgage was executed, which comprises one or more homes or other dwelling units, including first mortgages, real estate sales contracts, and other classes of first liens commonly given to secure advances on real estate by institutions in the State where the real estate is located which are authorized under the Act to become members, together with any credit instrument secured thereby.

§ 521.6-1 Home.

A structure designed for residential use by one family.

§ 521.6-2 Other dwelling unit.

A combination of rooms, suitable for a family, in a structure other than a home, designed primarily for residential use.

§ 521.7 Member.

An institution admitted to membership in a Bank.

§ 521.8 Net assets.

Gross assets less:

(a) The book value of shares pledged to secure share loans;

(b) Unapplied credits on mortgage loans;

(c) If carried as a liability—

(1) Mortgages in process; and

(2) Mortgages on real estate owned;

(d) Reserves for depreciation on office building, fixtures, and furniture, unless these assets are carried at net figures with reserves shown as a deduction from their original cost;

(e) Special reserves established under § 545.18 of Subchapter C of this chapter and similar reserves established by State-chartered institutions under State authority;

(f) Current expenses;

(g) Any similar item.

§ 521.9 Obligations of the United States.

All evidences of indebtedness issued, or fully guaranteed as to principal and interest, by the United States.

§ 521.10 State.

Except as defined in § 522.29 of this subchapter, a State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

§ 521.11 Paid-in value of stock in a Bank.

Aggregate payments on the par value of stock.

PART 522—ORGANIZATION OF THE BANKS INCORPORATION

2. Amend §§ 522.1-522.76 to read as follows:

§ 522.1 Charter.

A Bank's organization certificate is its charter.

CAPITAL

§ 522.5 Par value and price of stock.

The capital stock of each Bank in excess of its minimum capital shall be sold at par, unless the Board has fixed a higher price.

§ 522.6 Dividends.

A Bank's board of directors may, with approval of the Board, declare to stockholders of record at close of business on December 31 a dividend from net earnings or undivided profits on the paid-in value of capital stock outstanding on that date. On stock purchased during the dividend period, dividends shall be computed (after deducting amounts of any stock repurchased) only for the period such stock was outstanding.

§ 522.10 Issuance of stock certificates.

A Bank shall issue to each new member, as of the effective date of membership, a certificate of stock in the member's name for the amount of its stock subscription; but the Bank shall hold certificates so issued until it has received full payment therefor. If a member changes its name, a new certificate shall be issued in the new name.

§ 522.11 Stock certificates in consolidations.

Upon consolidation of two or more member institutions into one institution operating under the charter of one of the consolidating institutions, the stock subscriptions of the institutions, other than the survivor, may be refunded to the consolidated institution after adjustment to the minimum

number of shares it must hold under the act.

§ 522.12 Stock certificates in reorganizations.

If a member institution reorganizes by transferring all or part of its assets to another institution, the Bank shall, subject to Board approval, and unless the member's stock is held to secure advances, refund to the member the value thereof (not to exceed the amount paid in), or at its discretion, to the institution acquiring the assets; or if the institution acquiring the assets has been approved for membership, the Bank may apply such value to the new member's stock subscription.

§ 522.13 Lost or destroyed certificates.

Banks may issue to replace lost or destroyed certificates replacement certificates which show on their face that they are duplicates.

APPOINTMENT AND ELECTION OF DIRECTORS

§ 522.20 General.

Directors shall be appointed and elected as prescribed in section 7 of the Act.

§ 522.21 Term of appointive director.

The term of each appointive director shall be four years.

§ 522.22 Director representing Puerto Rico.

Under section 7(e) of the Act, the Federal Home Loan Bank of New York shall have an additional elective director to represent members in Puerto Rico.

§ 522.23 Definition of member.

For purposes of §§ 522.24-522.27 the word "member" means a member of a Bank at the end of the calendar year preceding the election.

§ 522.24 Location of member.

Under section 7(c) of the Act, a member shall be considered located in the State in which it has its principal place of business. If a member's principal place of business is not in a State, the Board will designate a State in which such member shall be considered located, and may in its discretion change such designation from time to time.

§ 522.25 Report of stock investment.

Each Bank shall, by May 31 of each year, report to the Board, on prescribed forms, the number of shares of Bank stock each of its members was required to hold at the end of the preceding calendar year. Such number shall be conclusive for purposes of appointment and election of directors.

§ 522.26 Designation and nomination of elective directorship.

(a) By August 1 of each year, the Board will (1) notify each member of the number of elective directorships designated for the State in which the member is located; and (2) notify each member in each State for which an elective directorship is to be filled of its right to nominate an eligible person(s) therefor, and provide each such member the following:

(i) A list of members located in its State;

(ii) A current list of directors of the Bank of which it is a member, containing the name of each director, the name and address of the member institution with which he is affiliated, and the expiration date of his term; and

(iii) The nominating certificate.

(b) Each member in each State entitled under these regulations to participate in the election of directors may by resolution of its governing body nominate, or authorize one of its directors or officers to nominate, a qualified person for each directorship to be filled in its State. The nominating certificate must be received in the Washington, D.C., office of the Secretary to the Board by September 4.

(c) A letter will be sent to each nominee by September 18 informing him of his nomination. However, no such letter will be sent to any nominee (1) then serving as an elective director whose term does not expire until after close of the calendar year during which the election is being held; (2) holding an appointive directorship, unless the Secretary has received from him, before September 4, notice of his intention to be a candidate for a directorship; or (3) determined by the board to be ineligible under section 7(d) of the act. With such letter will be sent a list of nominees, a copy of these regulations governing nomination and election of Bank directors, and a questionnaire. The completed questionnaire must be received in the office of the Secretary by October 3 for the nominee to have his name placed on the election ballot. A nominee shall be eligible for election only if his name is so placed on the ballot.

(d) Notwithstanding other provisions of this section, if at any time nominations are required the members of a Bank hold less than $1,000,000 of the capital stock of the Bank, the Board will, in accordance with section 7(h) of the Act, appoint a director(s) to fill the place(s) for which nominations are required.

§ 522.27 Election of directors.

(a) By November 1, the Board will mail to each member in each State for which an elective directorship is to be filled a ballot, a voting certification envelope, a ballot envelope, and a self-addressed envelope. The ballot will contain in alphabetical order the name of each candidate to represent the members located in such State who has complied with the provisions of § 522.26, the name and address of the member institution with which each candidate is affiliated, the candidate's title in the member institution, and the number of votes the member may cast, determined under the provisions of paragraph (b) of this section.

(b) The number of votes each member may cast shall equal the number of shares of stock in the Bank required by the Act to be held by such member at the end of the calendar year preceding the election, but not in excess of the average number of such shares required by the Act to be held at the end of such calendar year by members in such State.

(c) Each member entitled to receive a ballot may, by resolution of its governing body, cast its votes or authorize one of its directors or officers to cast its votes for each of as many candidates as there are directorships to be filled. The completed ballot shall be placed in the ballot envelope, which shall be sealed and placed in the certification envelope. The certification thereon shall be executed and the envelope sealed and mailed in the self-addressed envelope to the Secretary to the Board and must be received by December 3.

(d) By December 15 the Board will declare elected the candidate receiving the highest number of votes cast, and, where two or more directorships are to be filled from the ballot, the board will declare elected each candidate receiving the next succeeding highest number of votes until the number of candidates declared elected equals the number of directorships to be filled. If required by a tied vote, the Board will declare elected one of the candidates whose votes are tied.

(e) The Board will record the results of the election in its minutes and notify the directors elected of their election. The Board will furnish each member such results, including the name of each candidate, the name and address of the institution with which he is affiliated and his title therein, the number of votes he received, the number of members eligible to cast votes for the directorship(s), and the total eligible votes all such members were entitled to cast.

(f) All election material shall be sent to members by regular mail.

(g) Election ballots will not be opened until after 5 p.m., e.s.t., December 3. Only ballots executed on forms supplied by the board will be considered. No ballot may be changed after it is delivered to the Secretary, who will preserve all ballots until the end of the next calendar year. Ballots may be inspected only by members of the Board. If any date specified in

§§ 522.25-522.27 falls on a Saturday, Sunday, or holiday, the next business day shall be included in the time allowed. No nominating certificate, questionnaire, or ballot shall be considered unless received in the Office of the Secretary to the Board by the date specified.

§ 522.28 Prohibition of actions influencing votes.

No officer, attorney, employee, or agent of the Board or a Bank may individually or collectively take any action tending to influence votes for a directorship in a Bank, and no person shall include in any letter, literature, or other paraphernalia, language or any presentation indicating, directly or indirectly, that the Board, or any officer, attorney, employee, or agent of the Board or a Bank supports the candidacy of any person for an elective directorship. The Board, after hearing, may consider any such action grounds for dismissal from a directorship or may declare vacant the directorship involved, or both.

§ 522.29 Definition of "State."

As used in §§ 522.24, 522.26, and 522.27, a State, the District of Columbia, or Puerto Rico.

COMPENSATION AND DUTIES OF DIRECTORS

§ 522.60 Compensation.

Directors' fees shall be established by each Bank within limits set by the Board.

§ 522.61 Duties.

Individually and collectively, it is the specific duty of each Bank's directors to have the Bank comply with the Act and these regulations. Directors shall hold meetings and perform duties as prescribed in the Bank's bylaws.

SELECTION AND COMPENSATION OF OFFICERS AND EMPLOYEES

§ 522.70 Selection.

Officers, legal counsel, and employees of a Bank shall be elected or appointed in accordance with the Bank's bylaws. A full-time officer or employee of a Bank shall not act in any capacity for a member, other than the Federal Home Loan Mortgage Corporation, or institution insured by the Federal Savings and Loan Insurance Corporation under any understanding providing for continuous or repeated services, or act in any capacity for any such institution in any matter requiring action by the Bank or any of its directors, except when employed by, or with the consent of, the Insurance Corporation in cases involving payment of insurance, loans, purchases of assets or contributions by the Insurance Corporation under section 405 or 406 of the National Housing Act, as amended. These employment prohibitions shall apply to counsel and attorneys of any Bank, whether employed on a salary, fee, retainer, or other basis, except that, with prior consent of the Board, and to the extent of such consent, any such person may act as counsel or attorney for any institution regardless of such prohibitions.

§ 522.71 Compensation.

(a) The board of directors of each Bank shall annually adopt and submit to the Board for its approval an appropriate resolution showing the contemplated compensation of its President.

(b) The Board of directors of each Bank may fix the compensation for each officer other than President within ranges established by the Board and the total limits for such compensation in the Bank's approved budget. Each Bank may establish the amount and form of compensation of all other employees (including legal counsel) within the limits set forth in its approved budget. A Bank shall not pay any director, officer, employee, or other person a bonus.

§ 522.72 Indemnification.

(a) *Definitions and rules of construction.* (1) Definitions for purposes of this section.

(i) *Action.* Any judicial or administrative proceeding, or threatened proceeding, whether civil, criminal, or otherwise, including any appeal or other proceeding for review;

(ii) *Court.* Any court to which or in which any appeal or any proceeding for review is brought.

(iii) *Final judgment.* A judgment, decree, or order which is not appealable or as to which the period for appeal has expired with no appeal taken.

(iv) *Settlement.* Includes entry of a judgment by consent or confession or a plea of guilty or nolo contendere.

(2) References in this section to any individual or other person, including any Bank, shall include legal representatives, sucessors, and assigns thereof.

(b) *General.* Subject to paragraph (c) of this section, a Bank shall indemnify any person against whom an action is brought or threatened because that person is or was a director, officer, or employee of the Bank, for:

(1) Any amount for which that person becomes liable under a judgment in such action; and

(2) Reasonable costs and expenses, including reasonable attorney's fees, actually paid or incurred by that person in defending or settling such action, or in enforcing his rights under this section if he attains a favorable judgment in such enforcement action.

(c) *Requirements.* Indemnification shall be made to such person under paragraph (b) of this section only if:

(1) Final judgment on the merits is in his favor; or

(2) In case of (*i*) settlement, (*ii*) final judgment against him, or (*iii*) final judgment in his favor, other than on the merits, if a majority of the directors of the Bank determine that he was acting in good faith within the scope of his employment or authority as he could reasonably have perceived it under the circumstances and for a purpose he could reasonably have believed under the circumstances was in the best interests of the Bank or its members. However, no indemnification shall be made under this subparagraph unless the Bank gives the Board at least 60 days' notice of its intention to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. Such notice, a copy thereof, and a certified copy of the resolution containing the required determination by the board of directors shall be sent to the Secretary to the Board, who shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the Board advises the Bank in writing, within such notice period, of its objection thereto.

(d) *Insurance.* A Bank may obtain insurance to protect it and its directors, officers, and employees from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts, committed in their capacity as directors, officers, or employees. However, no Bank may obtain insurance which provides for payment of losses of any person incurred as a consequence of his willful or criminal misconduct.

(e) *Payment of expenses.* If a majority of the directors of a Bank concludes that, in connection with an action, any person ultimately may become entitled to indemnification under this section, the directors may authorize payment of reasonable costs and expenses, including reasonable attorneys' fees, arising from the defense or settlement of such action. Before making such payment the Bank shall obtain an agreement that it will be repaid if such person is later determined not to be entitled to such indemnification.

(f) *Exclusiveness of provisions.* No Bank shall indemnify any person referred to in paragraph (a) of this section or obtain insurance referred to in paragraph (c) of this section other than in accordance with this section.

DUTIES OF OFFICERS

§ 522.75 General.

The President of each Bank shall be its chief administrative officer. The President and other officers shall have

the powers and duties prescribed in the Bank's bylaws and these regulations.

§ 522.76 President.

The President shall supervise each member's compliance with the act and these regulations. He shall request a member not so complying to do so, and if the member does not thereafter comply, shall report the matter, or cause it to be reported, to the Board.

3. Amend paragraph (a) of § 522.80 to read as follows:

OFFICE OF FINANCE

§ 522.80 General.

(a) An Office of Finance is hereby established, which shall be located in Washington, D.C. and shall perform the functions set forth in § 522.81.

(b) * * *

(c) * * *

4. Amend the first two sentences of paragraph (b) of § 522.81 to read as follows:

(a) * * *

(b) The Office of Finance shall maintain in a checking account in a commercial bank approved by the Board an "imprest fund" in a maximum amount approved by the Board. Such bank account shall be subject to withdrawal by check or draft signed by either the Director, or by another person(s) designated by the Board. * * *

5. Amend the first sentence of § 522.82 to read as follows:

§ 522.82 Budget and expenses.

The Office of Finance shall annually submit to the Board by December 1 a budget of its proposed expenditures for the following calendar year. * * *

6. Amend the first sentence of paragraph (a) of § 522.87 to read as follows:

§ 522.87 Budget and expenses.

(a) The Office of Neighborhood Reinvestment shall annually submit to the Board by December 1 a budget of its proposed expenditures for the following calendar year. * * *

(b) * * *

7. Amend Parts 523, 524, and 525 to read as follows:

PART 523—MEMBERS OF BANKS APPLICATION FOR MEMBERSHIP

§ 523.1 Application form.

An applicant for membership shall submit Board-approved forms in duplicate to its district Bank.

§ 523.2 Examination and review of application.

Bank officers designated by its board of directors shall consider the application and obtain any additional information they consider appropriate. They shall make recommendations to the board of directors or the executive committee, which may also obtain additional information, and which shall send the application with its recommendations to the Board. Between meetings of the board of directors or executive committee, such officers may, if authorized to do so by the Bank's board of directors, send applications and their recommendations to the Board, and report their action to the next meeting of the board of directors or executive committees, whichever occurs first.

§ 523.3 Board action on applications.

On receipt of notice of Board action, the Bank will inform the applicant of such action and, if the application is approved, transmit to the applicant the membership certificate received from the Board.

§ 523.3-1 Automatic Board approval in certain cases.

A member removed from membership solely because its status as an insured institution under the National Housing Act is terminated by its conversion to an institution insured by the Federal Deposit Insurance Corporation shall, on the effective date of such conversion, be automatically approved by the Board as a member, if its Bank has approved a request by the member's board of directors or board of trustees for such membership. In such case, all relationships existing between the member and the Bank at the time of such conversion may continue.

STOCK SUBSCRIPTION

§ 523.4 Subscription.

An applicant shall subscribe for stock when it applies for membership.

§ 523.5 Additional subscription.

At the end of the calendar year, a Bank shall notify any member if additional stock subscription is required of the member.

§ 523.6 Adjustments in holdings.

A Bank's board of directors may from time to time increase or decrease the amount of stock of any member to conform to section 6(c) of the Act. If such amount is decreased upon proper application of the member, the Bank shall pay for each share, on its surrender, the value thereof determined under section 6(i) of the Act, or, at its election, credit any part of such payment against the member's debt to the Bank. A Bank may require a member to give 30 days' written notice of intention to apply for such a decrease, and a member's holdings shall not be reduced to an amount less than required by section 10(c) of the Act. A Bank's board of directors may by resolution designate the executive committee or an officer of the Bank to exercise powers granted by this section.

§ 523.7 Excess subscription.

With Bank approval, a member may subscribe for stock over the minimum amount, if the law under which the member operates so permits.

§ 523.8 Payment on subscription.

An applicant may, under section 6(d) of the Act, pay in installments for subscribed stock. If an applicant's admission to membership is substantially delayed following application, and it has furnished all information required and complied with applicable laws and Board regulations, it may make its second payment on admission, and succeeding payments as above provided. All other subscriptions shall be paid in full before stock certificates therefor are issued.

§ 523.9 Transfers.

To transfer stock a member shall apply through its Bank for Board approval.

LIQUIDITY

§ 523.10 Definitions for purposes of this section, §§ 523.11, and 523.12.

(a) *Cash.* Cash on hand and unpledged demand deposits in a Bank, an insured bank, or the Bank for Savings and Loan Associations, Chicago, Ill., but not gold in any form.

(b) *Insured bank.* A commercial bank whose deposits are insured by the Federal Deposit Insurance Corporation, not under control of any supervisory authority.

(c) *Liquidity base.* A member's net withdrawable accounts, or the policy reserve of a member insurance company required by State law, plus the member's short-term borrowings.

(d) *Net withdrawable accounts.* All withdrawable accounts less the unpaid balance of all loans secured by such accounts.

(e) *Short-term borrowings.* All borrowings payable on demand or in one year or less.

(f) *Obligations of the United States.* Evidences of indebtedness issued by the United States, or issued by an agency or instrumentality thereof and fully guaranteed as to principal and interest by the United States.

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

(1) Time deposits in a Bank or the Bank for Savings and Loan Associations, Chicago, Illinois;

(2) Except as the Board may otherwise direct in a specific case, obligations of the United States maturing in 5 years or less;

(3) Obligations with 5 years or less remaining until maturity, issued, or fully guaranteed as to principal and interest, by:

(i) A Bank(s);

(ii) The Federal National Mortgage Association;

(iii) The Government National Mortgage Association;

(iv) A Bank(s) for Cooperatives, including the Central Bank for Cooperatives;

(v) A Federal Land Bank(s);

(vi) A Federal Intermediate Credit Bank(s);

(vii) The Tennessee Valley Authority;

(viii) The Export-Import Bank of the United States;

(ix) The Commodity Credit Corporation; or

(x) The Federal Financing Bank;

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

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

(ii) Except for loans of unsecured day(s) funds such time deposits are (*a*) negotiable and will mature in one year or less, (*b*) not negotiable and will mature in 90 days or less, or (*c*) not withdrawable without notice and the notice periods do not exceed 90 days;

(iii) Loans of unsecured day(s) funds will mature in 6 months or less; and

(iv) The priority of claims of a lender of unsecured day(s) funds is not subordinate to claims of depositors in the borrower thereof;

(5) Bankers' acceptances of an insured bank if:

(i) The total of all such acceptances of the same bank held by the same member does not exceed one-fourth of 1 percent of total deposits of such bank (as shown by its last published statement of condition preceding the date of acceptance);

(ii) Such acceptances will mature in 9 months or less; and

(6) General obligations (other than gold-related obligations) of any State, territory, or possession of the United States, or political subdivision thereof, if:

(i) Such obligations continue to be either (*a*) rated in one of the four highest grades by the most recently published rating of such obligations by a nationally recognized investment rating service or (*b*) issued by a public housing agency and have the full faith and credit of the United States pledged under section 1421a(c) or section 1437i(a) of Title 42 of the United States Code, as amended; and

(ii) Such obligations will mature in 2 years or less.

(h) *Short-term liquid assets.* The total of cash, accrued interest on unpledged assets which qualify as liquid assets under subsection (g) of this section, or would so qualify except for their maturities, and the book value of the following unpledged assets (including such assets held subject to repurchase agreement):

(1) Time deposits specified in paragraph (g)(1) of this section;

(2) Obligations specified in paragraphs (g)(2) and (g)(3) of this section, which will mature in 12 months or less;

(3) Time and savings deposits, including loans of unsecured day(s) funds, which qualify as liquid assets under paragraph (g)(4) of this section and, in the case of such time deposits which are negotiable, except for loans of unsecured day(s) funds, will mature in 6 months of less;

(4) Bankers' acceptances specified in paragraph (g)(5) of this section which will mature in 6 months or less; and

(5) General obligations specified in paragraph (g)(6)(i)(*b*) of this section which will mature in 6 months or less;

§ 523.11 Liquidity requirements.

(a) *General.* Except as otherwise provided in paragraphs (b) and (d) of this section, for each calendar month, each member, other than a mutual savings bank with an election under paragraph (e) of this section in effect, shall maintain an average daily balance of liquid assets not less than 7 percent of the average daily balance of its liquidity base during the preceding calendar month, and each member, other than a mutual savings bank or an insurance company, shall maintain an average daily balance of short-term liquid assets of not less than 3 percent of the average daily balance of its liquidity base during the preceding calendar month.

(b) *Exception.* Instead of computing its liquidity requirement under paragraph (a) of this section, a member with less than $25,000,000 in total assets at the beginning of its current fiscal year may, by resolution of its board of directors, compute such requirement as a percentage of its liquidity base as of the end of the preceding calendar month. Such election shall remain in effect so long as the member continues to meet the asset requirement, unless sooner revoked by resolution of its board of directors.

(c) *Calculation of average daily balance.* For purposes of this section, § 523.10, and § 523.12, the "average daily balance of liquid assets", "average daily balance of short-term liquid assets", and "average daily balance of the member's liquidity base" shall be calculated by adding, respectively, the member's liquid assets, short-term liquid assets, or liquidity base, as of the close of each business day in a calendar month, and for any non-business day, as of the close of the nearest preceding business day, and dividing the respective total by the number of days in such month.

(d) *Reduction and suspension of liquidity requirements.* The Board may, to the extent and under conditions it may prescribe, permit a member to reduce its liquid assets below the minimum amount required by paragraph (a) of this section to meet withdrawals or pay obligations. The Board may suspend part or all of the liquidity requirements of said paragraph (a) whenever it determines that conditions of national emergency or unusual economic stress exist. Any such suspension, unless sooner terminated by its terms or by the Board, shall terminate after 90 days, but the Board may again suspend part or all of such requirement at any time.

(e) *election for mutual savings banks.* Any member mutual savings bank may maintain liquid assets in accordance with this subsection instead of the first sentence of paragraph (a) of this section. Any such member so electing shall maintain, for each calendar month, an average daily balance of liquid assets not less than 5 percent of its average daily liquidity base balance during the preceding calendar month, except as otherwise provided in paragraphs (b) and (d) of this section, and such member shall maintain Federal funds and commercial paper aggregating not less than the difference between (1) the amount of liquid assets which, but for such election, would have been required under the first sentence of paragraph (a) of this section and (2) the actual amount of its liquid assets.

§ 523.12 Deficiencies and penalties.

(a) *Calculation of deficiency.* (1) Except as provided in subparagraph (2) of this paragraph, a member's liquid assets of short-term liquid assets for any calendar month are deficient in the amount that the average daily balance of such assets for such calendar month is less than the respective minimum amount required under § 523.11.

(2) A member, other than an insurance company, may reduce any deficiency under subparagraph (1) of this paragraph as follows:

(i) For the first month of a current distribution period, by the amount of its aggregate net withdrawals (excess of withdrawals over cash savings re-

ceived) from withdrawable accounts during the last 3 business days of the immediately preceding month and the first 10 calendar days of the current month; and

(ii) For the second month of the same distribution period, by one-half of such amount of aggregate net withdrawals; but

(iii) No such reduction shall reduce the member's liquidity requirement below 4 percent of its liquidity base at the end of the immediately preceding distribution period.

(b) *Calculation of penalty.* A member shall calculate the penalty for any deficiency under paragraph (a) of this section by multiplying the amount of deficiency by 1/12 the sum of 2 percent and the annual interest rate for advances of one year or less charged by the member's Bank on the last day of the month in which the deficiency occurred. The penalty for deficiencies in one month in both liquid assets and short-term liquid assets shall be calculated only on the larger deficiency. No penalty shall be calculated on any deficiency of $5,000 or less unless the Board so directs in a specific case.

(c) *Assessment of penalty; compromise, remission, or mitigation.* The Board hereby assesses a penalty against each member in the amount calculated under paragraph (b) of this section. The Board may, on application submitted by a member through its Bank, compromise, remit, or mitigate, any such penalty before collection thereof. The President of such Bank, or any officer thereof designated by him, may, subject to conditions he may impose, so compromise, remit, or mitigate such penalty, if he determines:

(1) The penalty would seriously harm the member; or

(2) The deficiency resulted from either:

(i) Temporary disruption of normal operation caused by negotiation or implementation of a merger or similar transaction; or

(ii) Any situation beyond the control of the member's management. However, no such penalty may be compromised, remitted, or mitigated if the member has failed to observe any condition of a prior compromise, remission, or mitigation.

§ 523.13 Reports; records.

(a) *Reports.* By the 10th day of the month following assessment of a penalty under § 523.12(c) a member shall submit to its Bank a report regarding such penalty on forms obtained from the Board or the Bank.

(b) *Records.* Each member shall maintain records verifying its compliance with liquidity requirements prescribed by the Board, and make them available to the Board, or its representative, during supervisory examinations and at other times the Board may direct.

§ 523.14 Payment of penalty.

When a member submits a report required by § 523.13(a) it shall enclose a check, payable to its Bank, in the amount of the penalty for the month covered by the report, unless the member makes application under § 523.12(c).

REPORTS AND EXAMINATIONS

§ 523.15 Reports.

Each member shall make a report of its affairs at the end of each half of its fiscal year on forms prescribed by the Board. The member shall send the original report to the Board and one copy to its Bank, within 30 days of the date of the report. A savings bank may submit, in place of such report, copies of reports which it regularly submits to the Federal Deposit Insurance Corporation or to the State supervisory authority and any additional information required to determine its minimum stock subscription.

§ 523.20 Examinations of members.

Examinations of members, if required because of inadequacy of State examination for purposes of the Banks, shall be made at least annually, as prescribed by the Board, and their costs, as determined by the Board, shall be paid by the member.

§ 523.25 Official membership insignia.

Members may display the approved insignia of membership on their documents, advertising, and quarters, and likewise use the words "Member Federal Home Loan Bank System."

FLOOD INSURANCE

* * * * *

WITHDRAWAL AND REMOVAL FROM MEMBERSHIP

§ 523.30 Procedure for withdrawal.

A Bank shall submit to the Board any notice of withdrawal filed with it by a member. A member may cancel its notice of withdrawal by notifying the Board any time before the effective date of withdrawal.

§ 523.31 Procedure for removal.

(a) The following are grounds for removing a member from membership:

(1) Failure to comply with any provision of the Act or regulation of the Board adopted under it.

(2) Insolvency. Any member building and loan association, savings and loan association, cooperative bank, or homestead association is insolvent if its assets are less than its obligations.

(3) Management or home-financing policies inconsistent with sound and economical home-financing or the purposes of the Act.

(b) If the Board believes any such ground exists, it will give the member at least 30 days' written notice of its intention to terminate the member's membership. Such notice shall be served as provided in Part 509 of this chapter and state the grounds for such action and the time and place of a hearing at which the member may be heard. Such hearing shall be conducted in accordance with Part 509.

PART 524—OPERATIONS OF THE BANKS

§ 524.1 Investments.

(a) Banks may acquire or dispose of securities with prior approval of the Board or its designated representatives or in conformity with (1) authorizations of the Board or such representative or (2) stated Board policy. A Bank's board of directors may authorize Bank officer(s) to acquire or dispose of securities qualifing as liquidity for deposits under the investment policy of the Board as in the judgment of the officer(s) is necessary in the operation of the Bank. Any other acquisition or disposition must be authorized in advance by a majority of the board of directors, executive committee, or investment committee consisting of three or more persons a majority of whom are directors of the Bank. Single acquisitions or dispositions may be so authorized, or acquisitions and/or dispositions or securities of a stated amount maturing within specified dates as in the judgment of the officer(s) designated in the authorization are necessary in the operation of the Bank, may be so authorized, for periods of 90 days or less.

(b) Compliance with sections 11 and 16 of the act shall be determined based on the principal amount of obligations of the United States.

(c) Advances to members maturing within 18 months secured by home mortgages or obligations of the United States are investments in compliance with section 11(g) of the Act.

(d) Cash reserves may be held temporarily, awaiting investment opportunity, without violating section 16 of the Act.

§ 524.2 Loans guaranteed under the Foreign Assistance Act of 1961.

With prior approval of the Board, a Bank's board of directors may authorize it to acquire, hold, or dispose of any of the following loans, or interests therein, primarily to facilitate acquisition of participation interests in such loans by members authorized to make such investment:

(a) Housing project loans with any guaranty under section 221 of the Foreign Assistance Act of 1961, as in effect before December 30, 1969;

(b) Loans with any guaranty under section 224 of such Act, as in effect before December 30, 1969; or

(c) Loans with any guaranty under sections 221 or 222 of such Act, as in effect after December 29, 1969.

Prior approval of the Board is not required to repurchase a participation interest previously sold to a member.

§ 524.3 Transfer of funds between Banks.

Interbank borrowing shall be through unsecured deposits bearing interest at rates negotiated between Banks. If agreement on terms cannot be reached, the Director, Office of the Federal Home Loan Banks, may establish terms.

§ 524.4 Deposits from members.

(a) Banks may accept demand deposits from members, but shall pay no interest thereon.

(b) Banks may accept time deposits from members, reserving the right to require notice of intention to withdraw any part of such deposits. Rates of interest paid on such deposits may be set by the Bank's board of directors, or between regular meetings thereof, by a committee of directors selected by the board, or the Bank President if he is so authorized by the board. Unless otherwise specified by the board, a Bank President may delegate to any officer or employee of the Bank any authority he possesses under this subsection.

§ 524.5 Trustee powers.

A Bank may act as trustee of any trust affecting the business of any member or any institution or group applying for membership or for insurance of accounts, or any group applying for a charter for a Federal Savings and Loan Association, if

(a) Such trust is created or arises for the benefit of the institution or its savers, investors, or borrowers, or for promotion of sound and economical home financing; and

(b) In the case of applicants, the Bank ceases to act as trustee if the application is withdrawn or rejected. A Bank may make reasonable charges for services rendered in connection with such trust.

§ 524.6 Budgets.

As prescribed by the Board or its designee, each Bank shall prepare and submit to the Board for its approval a budget and certification of compliance of this subchapter signed by the Bank president. Each Bank will operate within such budget as approved or as it may be amended by the Bank's board of directors within limits set by the Board. Any amendment beyond such limits must be submitted to the Board for approval. The Director or Deputy Director, Office of the Federal Home Loan Banks, may approve amendments within limits set by the Board.

§ 524.7 Surety bonds.

Each Bank shall maintain adequate surety bonds covering all officers, employees, attorneys, or agents having control over, or access to, monies or securities owned by the bank or in its possession. The form, amount, and issuer of such bonds shall be approved by the Director or Deputy Director, Office of the Federal Home Loan Banks. Each bond shall require the insurer to notify the Board of cancellation of the bond or reduction of its coverage. A copy of the bond and evidence of its continuation shall be submitted to the Board.

§ 524.8 Insurance.

Each bank shall maintain insurance required by law, and may maintain any additional insurance its board of directors considers necessary for its protection.

§ 524.9 Safe-keeping accounts.

Securities owned by each Bank shall be held in the Federal Reserve Bank of New York or the Federal Reserve Bank of Chicago, subject to order of the Secretary of the Treasury, who will promptly transmit to the Federal Reserve Bank concerned all orders affecting such holding which the Board delivers to him. However, a Bank may arrange with a Federal Reserve Bank or one of its depositary commercial banks to hold United States Treasury Bills or Certificates of Indebtedness owned by it subject only to its order. Any special series United States Treasury Notes held by or for the account of any Bank may be held with the Treasurer of the United States or any depositary designated by the Board.

§ 524.10 Securities held in trust or as collateral.

Bonds and negotiable securities held by a Bank as collateral or in trust shall be placed in custody of a Federal Reserve Bank or branch thereof, a financial institution which is a member of the Federal Reserve System or the Federal Deposit Insurance Corporation, or under other arrangements approved by the Board. However this section shall not apply to bonds and negotiable securities held in custody under the plan for holding security transactions of member institutions approved August 13, 1943.

§ 524.11 Depositaries.

Each Bank shall maintain a checking account with the Federal Reserve Bank of New York and such other depositaries as the Bank's board of directors may designate, which depositaries shall, unless otherwise authorized, be members of the Federal Reserve System or the Federal Deposit Insurance Corporation.

§ 524.12 Donations.

A Bank may donate to charitable organizations, if in any calendar year, all such donations do not exceed $5,000, donations to any one such organization do not exceed $1,000, and each such donation is approved by the Bank's board of directors. Exceptions to such limitations shall be made only with prior approval of the Director or Deputy Director, Office of the Federal Home Loan Banks.

§ 524.13 Accounting.

Each Bank's accounting system is subject to approval by the Board, and its accounting forms are subject to approval by the Director, Office of the Federal Home Loan Banks.

§ 524.14 Gold and gold-related transactions.

No Bank may engage in any capacity or manner in any transaction or activity involving gold (including gold coin) or gold-related instruments or securities.

PART 525—ADVANCES

General Provisions Respecting Advances

§ 525.1 Limitations on advances.

A Bank shall not, unless the Board otherwise directs, make advances to any member exceeding in the aggregate the lesser of (a) the amount for which such member can legally obligate itself or (b) 50 percent of its net assets or (c) 50 percent of its liability for shares and deposits.

§ 525.2 Extension of credit.

Each Bank's board of directors shall adopt, and review at least semiannually, a policy on extension of credit to members consistent with this subchapter and stated Board policy. A Bank's officers designated by its board of directors may extend or deny credit and take other action consistent with such credit policy. The board of directors shall require such officers to report promptly to it or the executive committee all actions taken under this section and shall review such actions for compliance therewith.

§ 525.3 Interest rates.

Rates of interest on advances to members shall, within the range established by the Board, be set by the board of directors of each Bank, or between regular meetings of the board, by a committee of directors selected by the board, or the Bank President if he is so authorized by the board. Unless the board otherwise specifies, a Bank President may delegate any au-

thority he possesses under this section to any officer or employee of the Bank.

§ 525.4 Bank stock collateral.

Under section 10(c) of the Act, a Bank need not actually possess fully paid stock certificates before making an advance to a member, but such stock should be assigned in the note or other form of obligation used.

§ 525.7 Gold and gold-related securities ineligible as collateral.

No Bank may make an advance secured by, or accept as security for any obligation, gold or gold-related instruments or securities.

ADVANCES SECURED BY HOME MORTGAGES OR OBLIGATIONS OF THE UNITED STATES

§ 525.10 Terms of advances.

Banks may, under section 10 of the Act, make advances to members for periods up to 10 years secured by home mortgages or obligations of the United States. Banks may make to members such advances secured by home mortgages up to $90,000 with respect to dwellings in Alaska, Guam, or Hawaii.

§ 525.11 Determination of value of mortgage collateral.

Subject to limitations in the Act, each Bank shall determine the collateral value of each mortgage.

§ 525.12 Joint home and business property; joint dwelling units and business property.

An otherwise eligible home mortgage is not ineligible because the real estate also comprises improvements other than a home or other dwelling unit(s).

§ 525.13 Home mortgages exceeding $60,000.

A home mortgage originally written for more than $60,000, or $90,000 with respect to dwellings in Alaska, Guam, or Hawaii, for each home or other dwelling unit covered by the mortgage, but reduced to not more than that sum, may secure advances, if otherwise eligible.

§ 525.14 Past due mortgages.

A home mortgage is "past due more than 6 months when presented", if presented (a) 6 months after its final maturity date, (b) 6 months after the holder has declared a default, or (c) when 6 months' payments thereon have accrued and remain unpaid after the holder of the mortgage could have declared the whole debt due.

§ 525.15 Curing delinquencies on past due mortgages.

Modification of a delinquent mortgage to make it eligible as collateral must be in writing.

§ 525.16 Mortgage moratoria.

Banks may give full faith and credit to acts of State legislatures extending home mortgage indebtedness.

§ 525.17 Mortgage collateral becoming past due.

A home mortgage which becomes more than 6 months past due while held by a Bank as collateral may be retained if the Bank obtains additional collateral it considers adequate to secure the loan.

§ 525.18 Mortgages subject to prior tax liens.

A home mortgage on property subject to a prior tax lien is eligible as collateral unless there is substantial danger such property will be sold for taxes. Full consideration shall be given to unpaid taxes when fixing the collateral value of such mortgages.

§ 525.19 Reports on mortgage collateral.

At least annually, each borrowing member shall report to its Bank the current status of each home mortgage pledged to the Bank as collateral. The form of such report is subject to approval by the Director, Office of the Federal Home Loan Bank.

§ 525.20 Split mortgages.

If two or more mortgages on identical property secure a home mortgage loan(s) only part of which is amortized and otherwise qualified, the amortized part may secure advances under sections 10(a) (2) and (3) of the Act, but the unamortized part may secure advances only under section 10(a)(3) thereof. No such "split mortgage" may secure advances unless the entire mortgage debt is pledged.

§ 525.21 Additional collateral.

If eligible collateral for outstanding advances becomes deficient and the Bank cannot correspondingly reduce the amount of advances, it may obtain any collateral to strengthen its position.

ADVANCES ON OTHER SECURITY AND UNSECURED ADVANCES

§ 525.25 Advances secured by other securities.

Banks may, under section 11(g)(3) of the Act, make advances to members secured by securities other than obligations of the United States, if (a) the member may legally invest in such securities and (b) the securities have a readily ascertainable market value and are not in default as to principal or interest. Such advances shall not exceed the lesser of 80 percent of the market value or principal amount of such securities, except that advances secured by Federal Home Loan Bank obligations may equal the face value thereof.

§ 525.26 Advances secured by members' deposits.

Under section 11(g)(3) of the Act, advances secured by a member's time deposits may be made up to the total thereof for periods not exceeding 5 years or the maturity of such deposits, whichever is shorter.

§ 525.30 Acceleration of maturity.

Unless the Board authorizes otherwise, each note representing an advance under section 11(g)(4) of the Act shall permit the Bank to declare the note immediately due if the borrower's creditor liabilities, excluding liabilities to the Bank, exceed 5 percent of its net assets.

§ 525.31 Advances to pay debts.

Under section 11(g)(4) of the Act, a Bank may make advances to a member whose creditor liabilities other than advances from the Bank exceed 5 percent of its net assets, if such other liabilities will be thereby reduced below that percentage.

§ 525.32 Short term advances.

In addition to advances permitted under section 11(g)(4) of the Act, unsecured advances, or advances on any kind of readily available security, may be made to members under section 11(g)(3) of the Act. Such advances must be approved by the Bank's executive committee, a majority of its directors, or two of its officers. Except with prior approval of the Board, the aggregate unpaid principal of advances made under this section and any other advances having an unexpired maturity of more than 30 days, excluding advances under § 525.10, § 525.25, or § 525.26, shall not exceed 5 percent of the member's withdrawable accounts.

ADVANCES TO NON/MEMBER MORTGAGEES

§ 525.33 Lines of credit.

A Bank's board of directors or executive committee may establish a line of credit for each prospective nonmember mortgagee under section 10b of the Act.

§ 525.34 Eligible institutions.

The term "chartered institutions having succession and subject to the inspection and supervision of some governmental agency" in section 10b of the Act means institutions subject by law to continual examination and supervision by some competent governmental agency. An institution may

not qualify merely by contracting with the Federal National Mortgage Association, the Federal Housing Administration, or a similar agency to audit or examine it.

§ 525.35 Rates of interest..

Because non-member mortgagees have no capital investment in bank stock, rates of interest on advances to them shall be at least one-half of 1 percent, but not more than 1 percent, higher than rates charged to members, unless the board authorizes otherwise.

§ 525.36 Application for advances.

Applications by non-member mortgagees shall be in writing on forms approved by the Director, Office of the Federal Home Loan Banks. A Bank may deny such an application or grant it on terms no more liberal than apply to advances to members.

PART 526—LIMITATION ON RATE OF RETURN

8. Amend §§ 526.1, 526.2, and 526.3 to read as follows:

§ 526.1 Definitions used in this part.

(a) *Member.* A member as defined in § 521.7 of this subchapter, other than a saving bank whose accounts are insured by the Federal Deposit Insurance Corporation or an institution whose home office is located on Guam.

(b) *Certificate account.* A savings account evidenced by a certificate which, if held for a fixed or minimum term, will receive a rate of return greater than on regular accounts.

(c) *Notice account.* A savings account evidenced by an account book requiring the holder to give 90 days' written notice before each withdrawal from the account, except as applicable law or regulation permits.

(d) *Regular account.* A savings account that is not a certificate account or a notice account.

(e) *Savings account.* Any withdrawable account.

(f) *Return.* Any economic benefit received by any person on, or with respect to, a savings account, except as otherwise provided in § 526.2.

(g) *Distribution period.* The period of time a member uses as a basis for distributing a return.

(h) *Announced rate.* The rate of return an institution has declared or advertised it will pay or anticipates paying for a distribution period or, if none, the rate of return paid for the immediately preceding distribution period.

(i) *Give-away.* Any premium given by a member to induce new savings accounts or additions to existing ones.

(j) *Supervisory Agent.* The president of the member's Bank or any other officer or employee of the Bank designated by the Board as agent under §§ 501.10 or 501.11 of this chapter.

(k) *Instrument.* Includes any paper writing by which payment or credit is made.

(l) *Transaction account.* A regular account of a member from which the owner may make withdrawals by negotiable or transferable instruments to make transfers to third parties and which consists of funds deposited to the credit of, or the entire beneficial interest is held by, one or more individuals, or of a corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes and not operated for profit.

(m) *Public unit account.* Any savings account held by—

(1) An officer, employee, or agent of the United States having official custody of public funds and lawfully investing them in an institution whose accounts are insured by the Federal savings and Loan Insurance Corporation.

(2) An officer, employee, or agent of any State of the United States, Puerto Rico, or the Virgin Islands, or any county, municipality, or political subdivision thereof, as defined in § 561.5a of this chapter, having official custody of public funds and lawfully investing them in such an insured institution in such State, Puerto Rico, or the Virgin Islands, respectively.

(3) An officer, employer, or agent of the District of Columbia having official custody of public funds and lawfully investing them in such an insured institution in the District of Columbia.

§ 526.2 Maximum rate of return.

(a) *Prohibition on paying more than the maximum prescribed rate.* Except as this part provides, no member shall pay a return, directly or indirectly, by any means whatsoever. No member may pay a return at a rate exceeding the applicable maximum rate prescribed by the Board.

(b) *Exceptions.* Notwithstanding any reduction in such maximum prescribed rates, a member may pay a return on any savings account outstanding on the date of such reduction, as follows:

(1) *Regular account.* At the announced rate, for any part of a distribution period occurring before such effective date.

(2) *Certificate account.* At the rate specified in the certificate, for such period, including any renewal period, as the account remains outstanding.

(c) *Grace periods in computing return.* Members may treat funds received by the 10th of the month as if received on the first, and funds withdrawn during the last 3 business days of a calendar month ending a distribution period as if withdrawn at the end of such month, even if thereby the effective rate of return exceeds the maximum prescribed rate.

(d) *Compounding.* In calculating rate of return, the effect of compounding may be disregarded.

(e) *Loans secured by savings accounts.* In calculating rate of return, the effect of monthly loans secured by a certificate or regular account equalling the proportionate amount of the announced rate for the distribution period may be disregarded. A member shall make no other loan secured by a savings account at a rate of interest less than 1 percent per year more than the rate of return on the account.

(f) *Give-aways.* In calculating rate of return, the value of give-aways shall not be included, if:

(1) The give-away is part of a nonrecurring promotional campaign to increase savings accounts; and

(2) The cost of the give-away to the member (excluding any shipping and packaging costs) does not exceed—

(i) $5.00 for investment of less than $5,000.

(ii) $10.00 for investment of $5,000 or more.

(g) *Calculation of earnings.* The time factor used to calculate earnings on a savings account shall be a fraction having as numerator the actual number of days funds in the account earn a return and as denominator 365 or, in leap year, 366. If an account matures in multiples of one month, the numerator may be the corresponding multiple of 30 days. A time factor of 360/360 may also be used, but a time factor of 365/360 may be used only if the Supervisory Agent determines the member would otherwise be at a disadvantage competing with other financial institutions in its savings service area.

§ 526.3 Maximum rates of return payable by members on savings accounts.

(a) Except as provided in § 526.3-1 for certificate accounts of $100,000 or more, no member may pay an annual rate of return on a savings account exceeding the applicable maximum percentage, as follows:

(1) 5.25 percent—regular accounts.

(2) 5.75 percent—notice accounts, except public unit accounts, which may receive a rate of return as prescribed in § 526.3(c), and certificate accounts of $1,000 or more with a term or qualifying period of 90 days or more.

(3) 6.50 percent—certificate accounts of $1,000 or more with a term or qualifying period of 1 year or more.

(4) 6.75 percent—certificate accounts of $1,000 or more with a term or qualifying period of 30 months or more.

(5) 7.50 percent—certificate accounts of $1,000 or more with a term or qualifying period of 4 years or more.

(6) 7.75 percent—certificate accounts of $1,000 or more with a term or qualifying period of 6 years or more.

(b) *Exceptions as to minimum amount.* (1) If a Bank determines that in the Standard Metropolitan Statistical Area, or county not in such Area, in which a member has its home office, a mutual savings bank with an office therein is paying a return on deposits with a minimum amount lower than the corresponding minimum prescribed in paragraph (a) of this section for certificates with the same maturity, the member may issue certificate accounts of the same maturity in such lower minimum amount.

(2) If a Bank determines that in the State in which a member has its home office (i) the total amount of savings capital in mutual savings banks exceeds 30 percent of total savings capital in mutual savings banks, savings and loan associations, building and loan associations, homestead associations, and cooperative banks and (ii) a mutual savings bank with an office in the State is paying a return on deposits with a minimum amount lower than the corresponding minimum prescribed in paragraph (a) of this section for certificate accounts of the same maturity, the member may issue certificate accounts of the same maturity in such lower minimum amount.

(3) Without regard to the minimum amount requirements, a member may pay a return as permitted by paragraph (a) of this section on certificate accounts issued under a plan providing for payment of a bonus if the saver makes at least 12 regular monthly payments.

(4) Without regard to the minimum amount requirements, a member may pay a return as permitted by paragraph (a) of this section on certificate accounts which qualify as retirement accounts under section 401(d) or section 408(a) of the Internal Revenue Code of 1954.

(c) *Exceptions as to terms or qualifying periods.* A member may pay a rate of return not exceeding the highest rate permitted under paragraph (a) of this section on any certificate account which is (1) a public unit account of $1,000 or more with a maturity of 30 days or more, or (2) a certificate account which qualifies as a retirement account under section 401(d) or section 408(a) of the Internal Revenue Code of 1954 and has a term of 3 years or more.

§§ 526.4 and 526.5 [Deleted]

9. Delete §§ 526.4 and 526.5.

§ 526.5–1 [Renumbered as § 526.3–1]

10. Renumber § 526.5–1 as § 526.3–1.

11. Amend §§ 526.6, 526.6–1, 526.7, 526.8, and 526.9 to read as follows:

§ 526.6 Advertising interest or dividends on savings accounts.

The following rules apply to advertisements, announcements, or solicitations relating to interest or dividends paid on a member's savings accounts:

(a) *Annual rate of simple interest.* Interest or dividend rates shall be stated within the applicable maximum rate in terms of annual rates of simple interest or dividends.

(b) *Percentage yield based on one year.* If a percentage yield achieved by compounding interest or dividends during one year is stated, the annual rate of simple interest shall be stated with equal prominence, with reference to the basis of compounding. A percentage yield based on the effect of grace periods shall not be stated.

(c) *Percentage yield based on more than one year.* A total percentage yield, compounded or simple, based on more than one year, or an average annual percentage yield achieved by compounding during more than one year, shall not be indicated.

(d) *Time or amount requirements.* If a stated rate is payable only on savings accounts that meet time or amount requirements, such requirements shall be clearly and conspicuously stated. If the time requirement for a stated rate exceeds one year, the required number of years shall be stated with equal prominence, with an indication of any lower rate(s) applicable if the savings account is withdrawn earlier.

(e) *Penalty for early withdrawals.* A clear and conspicuous notice shall be included stating that Federal regulations require a substantial interest penalty for withdrawal from a certificate account before maturity. Such notice may state, "A substantial interest penalty is required for early withdrawal."

(f) *Profit.* Interest or dividends paid on savings accounts shall not be called "profit."

(g) *Accuracy of advertising.* No representation may be inaccurate or misleading.

(h) *Solicitation of savings accounts for members.* This section applies to any person or organization soliciting savings accounts for a member.

(i) *Gold.* Any statement that any portion of interest of dividends is payable in gold (including gold coin), gold related instruments or securities, or an amount of money determined in any manner related to gold is prohibited.

§ 526.6–1 Disclosure on acceptance.

A member accepting a certificate account deposit shall give the depositor a written description of the applicable premature withdrawal penalty. Such statement need not be given on renewal of an existing certificate account.

§ 526.7 Penalty for early withdrawal.

(a) For any certificate account issued after October 31, 1973 (except as paragraph (b) of this section provides), a member other than an insured institution, shall impose the following conditions on any withdrawal before the end of the term or qualifying period: (1) The account holder shall receive interest or dividends from the date of issuance of the account on the amount withdrawn at a rate not exceeding the rate being paid on regular accounts; and (2) the account holder shall pay a penalty of at least (i) the interest or dividends at such rate for 90 days (3 months) on the amount withdrawn or (ii) all interest or dividends at such rate (since issuance or renewal of the certificate account) on the amount withdrawn.

(b) Such penalty need not be applied if (1) such withdrawal is made after death of the owner of the account; the "owner" is an individual who at death had full legal and beneficial title to all or part of the account and full power of disposition or alienation with respect thereto, including but not limited to power of revocation with respect to any trust, regardless of whether such owner was a trustee, or which such account comprises all or part of the trust assets; or (2) the account qualifies as a retirement account under section 401(d) or section 408(a) of the Internal Revenue Code of 1954, and withdrawal is made to distribute the funds in the account following the participant's death or disability or after he becomes 59½ years of age.

§ 526.8 Transaction accounts.

A member having its home office in New Hampshire, Massachusetts, Connecticut, Rhode Island, Maine, or Vermont may pay a return on transaction accounts, as follows:

(a) The rate of return shall not exceed 5.00 percent per year.

(b) A service charge may be imposed for handling instruments relating to such accounts.

(c) To the extent practicable, every advertisement, announcement, or solicitation relating to such accounts shall be limited to media directed toward residents of New Hampshire, Massachusetts, Connecticut, Rhode Island, Maine, or Vermont with a substantial circulation or audience within those states. Section 526.6 shall apply to such advertisements, announcements, and solicitations.

§ 526.9 Payment of interest or dividends in gold or its equivalent.

No member shall pay any interest or dividend in (a) gold (including gold coin), (b) gold-related instruments or securities, or (c) an amount of money determined in any manner related to gold.

12. Amend Parts 527, 531, and 532 to read as follows:

PART 527—HOUSING OPPORTUNITY ALLOWANCE PROGRAM

§ 527.1 General.

Title I of the Emergency Home Finance Act of 1970, Pub. L. 91-351, authorizes the Board to disburse appropriated funds to Banks to adjust the effective interest rates on advances to member institutions and prescribe terms to assure that such funds are used to assist in providing housing for low- and middle-income families. This Part applies to loans for the purchase of single-family dwellings.

§ 527.2 Definitions.

(a) *Adjusted annual income.* The total of—

(1) Adjusted gross income as defined in § 62 of the Internal Revenue Code; and

(2) "Tax-free" interest on governmental obligations.

(b) *Allowance.* A Housing Opportunity Allowance to be credited against interest due on loans and Bank advances.

(d) *Member institution.* A member, as defined in § 521.7 of this subchapter, whose accounts or deposits are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation, or which agrees to permit and pay the cost of any examination the Board may require to insure compliance with this part.

§ 527.3 Middle-income families.

Middle-income families receiving an allowance of $20 from a member institution under an outstanding commitment shall continue to receive that allowance until the commitment expires.

§ 527.4 Low-income families.

Low-income families receiving an allowance from a member institution under an outstanding commitment shall continue to receive that allowance. Subject to recertification of income category under § 527.8, the amount of such allowance and the number of monthly payments against which such allowance is credited are based on the adjusted annual income of the borrower when the application for an allowance was approved, expressed as a percentage of the applicable HOAP limits in the following table:

Adjusted annual income as percentage of maximum HOAP limits	Allowance for each of first 60 payments [1]	Allowance for each of second 60 payments [1]	Total allowances
65 to 66.7	$25	0	$1,500
63 to 64.9	30	0	1,800
61 to 62.9	35	0	2,100
59 to 60.9	40	20	3,600
57 to 58.9	45	25	4,200
54 to 56.9	50	30	4,800
52 to 53.9	55	35	5,400
50 to 51.9	60	40	6,000
40 to 49.9	65	45	6,600
39.9 and under	70	50	7,200

[1] The amount of the allowance may not exceed 75 percent of the principal and interest portion of a monthly installment payment.

§ 527.5 Credits to member institutions.

(a) *General.* Each member institution shall receive from its Bank a credit against interest due on advances equalling the total amount of allowances the member institution has properly credited.

(b) *Procedure.* Each member institution crediting allowances during a month shall, by the 20th day of the next month, submit to its Bank a report under paragraph (c) of this section. Such member shall deduct from any subsequent bill for interest due on outstanding advances from the Bank an amount equalling the allowances so reported, and remit only the net amount.

(c) *Form of report.* The report required by paragraph (b) of this section shall be on a form prescribed by the Board and obtained from the Banks, and shall be signed by an officer of the member institution.

§ 527.6 Disbursement of funds to Banks.

Each Bank shall periodically submit vouchers certifying the amount of credits made under § 527.5 by the Bank against interest due on advances, and the Board shall promptly disburse to each Bank an amount equalling the total amount of such credits properly made by the Bank during the relevant period.

§ 527.7 Retention of documents.

A member institution shall retain its copy of each application for an allowance and the original of all other closing documents required at the closing of the loan on which the allowance is credited.

§ 527.8 Recertification of income.

If at the time of application for an allowance under § 527.4 the borrower's income did not exceed 60.9 percent of the applicable maximum HOAP limits, such income shall be recertified after the first 60 monthly installment payment are accepted by the member institution. The borrower shall provide information for the member institution to determine the borrower's continued eligibility and current income category. If, at the time of such recertification, the borrower's adjusted annual income still does not exceed the 60.9 percent limit, the borrower may receive allowance credits on 60 additional monthly installment payments. The amount of such credits shall correspond to the borrower's income category in the table in § 527.4, as of the time of approval of the original application for allowance or the time of recertification, whichever is lower. A copy of the recertification, signed by an officer of the member institution shall be promptly submitted to the member institution's Bank.

PART 531—STATEMENTS OF POLICY

§ 531.1 Policy on advances.

(a) Banks may make advances to members, subject to regulations and restrictions the Board may prescribe. Access by members to advances is a privilege which may be limited under the act. advances may be made to meet withdrawals, cover seasonal requirements, and expand residential mortgage portfolios. Advances shall not be made to permit redemption of accounts or payment of withdrawals requested or suggested by the member, but in a rare circumstance and for compelling reasons, a Bank may request the Board to approve making such an advance. In making advances to expand residential mortgage portfolios, Banks shall give due consideration to soundness of credit, need to stabilize home financing, discouragement of building booms, and prevention of distressed conditions in housing and mortgage markets.

(b) Advances should be used to meet clear needs for funds rather than to take advantage of rate differential. They should be made only for purposes consistent with the Act. Members should not seek credit in anticipation of withdrawals, credit should not be granted to increase cash positions or purchase securities, except to permit the member to re-establish its normal liquidity.

(c) Members' loan commitments should not exceed reasonable levels, giving due consideration to (1) the member's condition and anticipated cash flows, (2) residential mortgage market requirements, and (3) the amount of credit the member's Bank has indicated it will make available.

(d) Regardless of previous credit determinations, loan officers of Banks should carefully examine advance applications to determine if they should be accepted, rejected, or modified. Particular attention should be given to precise purposes of the proposed advance and the type of properties and transactions for which funds are sought.

§ 531.4 Verification of collateral held by members under trust receipt.

A member may retain documents evidencing home mortgages it has assigned to its Bank to secure advances, if it provides a trust receipt or otherwise agrees to hold such documents for the benefit and subject to the direction and control of the Bank. In such cases, the Bank shall periodically verify that such mortgages exist and that the member has not intermingled such documents with other documents. This verification should be done by the member's auditor when the member is audited or, if the member is not audited regularly, by representatives of the appropriate supervisory authority when the member is examined. Such verification may also be made at any time by a representative of the Bank, and shall be so made if the Bank was not satisfied with the verification during the preceding 16 month period. Verification shall be done in accordance with generally accepted auditing standands and shall include tests, of the member's books, records, and documents necessary to provide a reasonable basis for a conclusion and certification thereof. The Bank shall prescribe the type and form of certification.

§ 531.7 Distribution of maturities of certificate accounts of 1 year or more.

* * * * *

§ 531.8 Guidelines relating to nondiscrimination in lending.

* * * * *

§ 531.9 Interest rates on advances.

Except as the Board may otherwise provide, the following requirements shall apply to advances by Banks to their members:

(a) Obligations evidencing such advances shall, except under paragraph (b) of this section, be written at rates of interest within the range approved by the Board, calculated on the unpaid principal balance from time to time outstanding, and Banks shall not, except under paragraph (c) of this section, collect interest on such advances at a rate outside such approved range of rates, so calculated;

(b) Obligations evidencing such advances may provide that the holder of the obligation may (1) decrease the interest rate thereon and (2) by giving the member or principal obligor notice specified in the obligation, not exceeding 30 days, increase such rate to a rate not in excess of the maximum rate then permitted by the Board.

(c) Obligations evidencing such advances shall provide for an increase of not less than 1 percent and not more than 5 percent per year in the then current rate on past due principal and interest.

(d) All forms of obligations used to evidence such advances, and the opinion of Bank Counsel as to their validity in the jurisdiction(s) where they will be used, shall be submitted for approval to the Director or Deputy Director, Office of the Federal Home Loan Banks.

§ 531.10 Liquidating dividends in mergers.

(a) The Board will consider payment to holders of savings accounts in a disappearing institution as part of a merger with a member as defined in § 526.1 of this chapter, a violation of § 526.2(a) of this chapter if the payment, together with any other return to such holders, exceeds the maximum rate of return prescribed in § 526.3 of this chapter. The term "merger" includes consolidations and bulk purchases of assets in exchange for assumption of savings accounts and other liabilities. However, payment as part of a transaction involving bulk transfer of assets without assumption of savings accounts and other liabilities would not be considered part of a merger, and such payment would not violate § 526.3. In a merger of the bulk-purchase-of-assets type, with assumption of savings accounts and other liabilities, a disappearing mutual institution is not actually liquidated so as to entitle holders of its savings accounts to a distribution of its net worth. For these purposes, a savings account is considered assumed unless full payment therefor has been made to the holder.

(b) The Board will not consider a payment by a disappearing nonmember institution to holders of its savings accounts, in contemplation of a merger with a member, but before execution of a merger commitment, a violation of § 526.2(a). However, in acting on any application under §§ 546.2 or 563.22 of this chapter, the Board will consider relevant to the insurance risk of the Federal Deposit Insurance Corporation the effect of any such payment on the financial condition of the member.

(c) This Statement of Policy does not apply to payment under merger agreements, executed by both institutions prior to March 11, 1975.

PART 532—BOARD RULINGS

§ 532.1 Payment in gold or its equivalent.

Section 463(a) of 31 U.S.C. provides, in part, that "[e]very provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount of money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation (incurred after June 5., 1933)." The Board believes that section remains in effect even though Pub. L. 93-373 invalidated laws prohibiting persons from purchasing, holding, selling, or otherwise dealing with gold, effective December 31, 1974. The Board interprets 31 U.S.C. 463 as prohibiting members from agreeing to pay any part of the principal of their savings accounts in gold (including gold coin), gold related instruments or securities, or an amount of money determined with reference to gold.

(Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); Title I, Pub. L. 91-931, 84 Stat. 450. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-44 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc. 78-9151 Filed 4-5-78; 8:45 am]

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 78-NE-06]

AIRWORTHINESS DIRECTIVES

Pratt & Whitney Aircraft JT9D Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt an Airworthiness Directive (AD) that would require a repetitive inspection of the No. 4 bearing compartment sump on all Pratt & Whitney Aircraft JT9D turbofan engines not incorporating an annular strainer element, P/N 774104, in the No. 4 bearing compartment. The proposed AD is needed to prevent plugging of the No. 4 bearing compartment oil scavenge tube which could result in a fracture of the sixth stage turbine disk.

DATE: Comments must be received on or before May 26, 1978.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, New England Region, Attention: Rules Docket No., 12 New England Executive Park, Burlington, Mass. 01803.

The applicable service bulletin and Engine Manual may be obtained from: Pratt & Whitney Aircraft, Division of United Technologies Corp., 400 Main Street, East Hartford, Conn. 06108.

A copy of the service bulletin and Engine Manual is contained in the Rules Docket, Federal Aviation Administration, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Mass. 01803.

FOR FURTHER INFORMATION CONTACT:

Daniel P. Salvano, Propulsion Section (ANE-214), Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Mass. 01803, telephone 617-273-7347.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

The FAA has determined that coke from the No. 4 bearing compartment can block the compartment oil scavenge tube. This blockage permits the compartment to flood with oil . Oil is forced past the carbon seals into the area behind the sixth stage turbine disk. The heat in this area ignites the oil which can thermally overstress the disk, resulting in a disk failure. Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require a repetitive inspection of the No. 4 Bearing compartment sump on JT9D engines not incorporating an annular strainer element, P/N 774104.

DRAFTING INFORMATION

The principal authors of this document are Daniel P. Salvano, Propulsion Section, Engineering and Manufacturing Branch, and George L. Thompson, Office of the Regional Counsel, New England Region.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

PRATT AND WHITNEY AIRCRAFT: Applies to all Pratt & Whitney Aircraft JT9D turbofan engines not incorporating an annular strainer element, P/N 774104, in the No. 4 bearing compartment.

Compliance required as indicated.

To preclude failures of sixth stage turbine disks due to a plugged No. 4 bearing compartment oil scavenge tube, inspect the inside of the No. 4 bearing compartment sump for coke in accordance with the provisions of Pratt & Whitney Alert Service Bulletin No. 4826, dated October 17, 1977, or later FAA-approved revision, in accordance with the following schedule:

Engines with No. 4 bearing compartments having more than 6,000 hours time in service since new or the last cleaning per ASB 4826:

1. Must have a daily visual tailpipe inspection for oil leakage from the No. 4 bearing compartment. If leakage is noted, the compartment must be inspected prior to further flight. The daily visual inspection may be discontinued after accomplishing the compartment inspection noted below. The flight engineer may perform the daily inspection.

2. Must have the compartment inspected within the next 1,500 hours time in service after the effective date of this AD and every 5,000 hours time in service thereafter.

Engines having unacceptable coke formation in the forward portion of the No. 4 compartment sump area, as defined in Figure 2 of ASB 4826, must have the sump and compartment oil scavenge tube cleaned in accordance with the JT9D Engine Manual, P/N 646028, Section 72-53-00, prior to further flight.

Upon request of the operator, an equivalent method of compliance with the requirements of this AD may be approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, New England Region.

Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, New England Region, may adjust the initial inspection interval specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive, who have not already received these documents from the manufacturer, may obtain copies upon request to Pratt & Whitney Aircraft, Division of United Technologies Corp., 400 Main Street, East Hartford, Conn. 06108. These documents may also be examined at the Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Mass., and at FAA Headquarters, 800 Independence Avenue SW., Washington, D.C. A historical file on this AD, which includes the incorporated material in full, is maintained by the FAA at its headquarters in Washington, D.C., and at the New England Region.

(Sec. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.85)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular 107.

Issued in Burlington, Mass., on March 28, 1978.

ROBERT E. WHITTINGTON,
Director, New England Region.

NOTE.—The incorporation by reference provisions of this document was approved by the Director of the Federal Register on June 19, 1967.

[FR Doc. 78-9088 Filed 4-5-78; 8:45 am]

[4910-13]

[14 CFR Part 71]

[Airspace Docket No. 78-SW-7]

TRANSITION AREA: FOLLETT, TEX.

Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a transition area at Follett, Tex., to provide controlled airspace for aircraft executing a proposed instrument approach procedure to the Follett-Lipscomb County Airport using the Gage, Oklahoma VHF Omnidirectional Radio Range-Tactical Air Navigation (VORTAC) Facility. Coincident with this action the airport will be changed from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR) status.

DATES: Comments must be received on or before May 6, 1978.

ADDRESSES: Send comments on the proposal to:

Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Tex. 76101.

The official docket may be examined at the following location:

Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Tex.

An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

David Gonzalez, Airspace and Procedures Branch (ASW-536), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Tex. 76101;

telephone: 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G § 71.181 (43 FR 440) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting IFR activity. Designation of the transition area at Follett, Tex., will necessitate an amendment to this subpart.

COMMENTS INVITED

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Tex. 76101. All communications received on or before May 6, 1978, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Tex. 76101, or by calling 817-624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

THE PROPOSAL

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area at Follett, Tex. The FAA believes this action will enhance IFR operations at the Follett Lipscomb County Airport by providing controlled airspace for aircraft executing a proposed instrument approach procedure using the Gage, Oklahoma VORTAC. Subpart G of Part 71 was republished in the FEDERAL REGISTER on January 3, 1978. (43 FR 440).

DRAFTING INFORMATION

The principal authors of this document are David Gonzalez, Airspace and Procedures Branch, and Robert C. Nelson, Office of the Regional Counsel.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 440) by adding the Follett, Tex., transition area as follows:

FOLLETT, TEX.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Follett-Lipscomb County Airport, Follett, Tex. (latitude 36°26'25" N., longitude 100°07'20" W.).

(Sec., 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

NOTE: The FAA has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Forth Worth, Tex., on March 27, 1978.

PAUL J. BAKER,
Acting Director,
Southwest Region.

[FR Doc. 78-9085 Filed 4-5-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 207, 208, and 212]

[EDR-351; Docket 31788; dated March 30, 1978]

SPLIT ALL-CARGO CHARTERS AND SPLIT PASSENGER-CARGO CHARTERS

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites public comment on proposed rules that would allow more than one person to charter the capacity of an aircraft for air freight, and would allow the unused cargo capacity of a passenger charter flight to be similarly chartered. These proposed rules would relax restrictions in the air freight industry, and are in response to a petition for rulemaking by Trans International Airlines and World Airways.

DATES: Comments by: May 16, 1978. Reply Comments by: June 5, 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: April 26, 1978. Docket Section prepares the Service List and sends it to each person listed, who then serves his comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 31788, 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:

Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: Under the parts of the Board's Economic Regulations which regulate cargo charter flights in general (14 CFR parts 207, 208, 212), the entire capacity of an aircraft must be chartered by one person in order to ship air freight.[1] So called "split charters" (where the aircraft is chartered by more than one person) are not permitted for the movement of property, as they are for passenger travel. Nor can the excess freight capacity on a passenger charter be chartered for the carriage of property.

On December 5, 1977, Trans International Airlines and World Airways (TIA/World) filed a petition for rulemaking to amend these regulations to permit split charters on aircraft chartered for all-cargo service, and to permit one person to charter the entire unused freight capacity of an aircraft chartered for passenger service. Answers to the petition have been filed by Delta Air Lines, Certain Trunkline Carriers (Trunks),[2] Seaboard World Airlines (Seaboard), and the Flying Tiger Line (FTL).[3] An informal communication was also received from Rich International Airways.

Although both petitioners are supplemental air carriers, and several of their arguments are couched in terms of the supplementals, their proposal, as well as the rules proposed here, apply to the chartering authority of

[1] No amendment to part 214 (14 CFR part 214) is proposed in this notice because that part provides rules only for passenger charters conducted by the foreign air carriers operating under permits authorizing charter service exclusively.

[2] The answer of the Trunks represents the views of: American Airlines, Pan American World Airways, Trans World Airlines, and Western Air Lines.

[3] FTL, Seaboard, and the Trunks had requested permission to file their answers late. For good cause shown, the request is granted.

all U.S. certificated and foreign air carriers. The petitioners' basic premise is that the cargo charter market is stagnant and needs direct Board encouragement. According to TIA-World, the total domestic civilian non-scheduled freight revenue ton miles have decreased by 36.7 percent in the last 4 years, the domestic civilian cargo traffic of the supplementals by 23.7 percent, and, in the international markets, the total freight revenue ton miles have increased by only 12.6 percent.

One of the primary reasons for this lack of strong growth in non-scheduled freight traffic operations, argue the petitioners, is the acquisition of large capacity, wide-bodied jet aircraft by the main charter carriers, especially the supplementals. The use of these aircraft has tripled and quadrupled the available cargo capacity of an individual aircraft. TIA/World contend that this development, coupled with the requirement that the entire capacity be chartered by one person, has limited the availability of air freight charters to large corporate shippers and forwarders, and has shut small shipments out of the charter freight market. To demonstrate the importance of this excluded freight, they cite the Domestic Air Freight Rate Investigation (Order 77-8-62, August 15, 1977, Freight Origin and Destination Survey), as showing for the year ended in June 1974 (the last year for which itemized data are available) that nearly 90 percent of all domestic bulk freight movements, comprising by weight 75 percent of all domestic air freight shipped, involved shipments of less than 5,000 pounds.

Another problem of the charter air freight market, empty back-hauls (the return leg of an outgoing charter), can be substantially eliminated, the petitioners claim, by permitting split passenger-cargo charters. This would enable a freight charterer to use the significant empty cargo capacity of many passenger charter flights. According to TIA/World, cargo charter service could then profitably be operated one-way, since only small additional costs would be involved in carrying freight on a passenger charter flight. Split passenger-cargo charters, argue TIA/World, would also help reduce the cost to the passenger charterer, thereby providing an incentive for reducing passenger charter fares, and would tend to prevent the cancellation of otherwise marginal passenger charters.

As to their situation in particular, TIA/World argues that the supplemental carriers need expanded market opportunities and additional sources of revenues. Their military operations have been decreasing (by $16,000,000 between 1975 and 1976), they claim, and the recent low fares of the scheduled carriers have taken their toll on the charter passenger service side. In addition, contend the petitioners, the new Section 418 all-cargo carriers will be able to provide virtually unregulated competition with the supplementals in domestic air freight markets.

Anticipating the opposing arguments of the scheduled cargo carriers, TIA/World contend that these proposals will not result in any significant diversion from the scheduled carriers, and are within the statutory concept of charters under the Act. They cite the Air Freight Forwarders' Charters Investigation (Order 77-7-25, served July 13, 1977) as stating that diversion per se is not the applicable standard, but, rather, whether a charter type is likely to have so substantial an impact on the scheduled carriers' scheduled services as to result in reductions in scheduled services so substantial that they no longer serve the convenience of the shipping public. For several reasons, TIA/World argue that the grant of split all-cargo and split passenger-cargo charters is unlikely to cause diversion of this magnitude. According to them, charters account for only 1.9 percent of the domestic cargo market and 13.2 percent of the international cargo market. TIA/World argue that with such a small percentage of the market, cargo charter operations would have to increase at an unprecedented rate before meeting the Board's definition of excessive diversion. Further, they contend, there are other qualities of these charters which would prevent any such growth, as, for example, the problem of empty return flights on split all-cargo charters, the problem of matching itineraries of various shippers and forwarders on the same flight, and the unwillingness of many shippers and freight indirect air carriers to assume the economic risk of cancellation of the charter flight if the entire capacity cannot be chartered.

So that the individual split charter will use a significant portion of the capacity, and the entire capacity be taken up by only a limited number of split charters, TIA/World propose the following formula for split all-cargo charters: for aircraft of less than 20,000 pounds cargo capacity, a maximum of two charters; for aircraft from 20,000 to 60,000 pounds cargo capacity, a maximum of three charters; and for aircraft over 60,000 pounds cargo capacity, a maximum determined by dividing the aircraft capacity by 20,000 pounds. In addition, each freight charter must be at least 5,000 pounds, or the equivalent cubic capacity. The petitioners emphasize that the 5,000 pound limit is greater than the vast percentage of domestic air freight shipments (we have already mentioned their citation of DAFRI to support this assertion). For split passenger-cargo charters, TIA/World recommends that a single shipper or forwarder be required to charter the entire capacity of the aircraft cargo space, available after accommodating passenger baggage.

The second argument against the proposal anticipated by the petitioners is that such freight charters are illegal under the Act. TIA/World cite two court decisions as stating that split charters are within the Board's authority under the Act, and that the distinguishing characteristics of a charter type must be viewed as a whole and considered in terms of their cumulative effect.[4] As argued by petitioners, the proposed split charters require that the entire capacity of the aircraft be chartered, that single shippers contract for a significant block of capacity, and that either the individual shipper or the indirect air carrier assume the economic risk of cancellation, as opposed to individually waybilled shipments on scheduled service, where the risk is assumed by the direct carrier. TIA/World further states that the Board's past position on the legality of aplit charters is unclear, rejecting the concept twice as possibly diversionary, and refusing to decide the legal question in 1976.[5]

FTL, Seaboard, and the Trunks oppose the proposals on the basis of diversion and legality. Both FTL and Seaboard concentrate their arguments on international markets. According to FTL, only one scheduled international all-cargo carrier can operate profitably, and authorization of split charters would only further dilute an already limited and marginal market. Seaboard argues that authorization of these split charters would be severely prejudicial to its initiatives to restructure transatlantic cargo rates, which are re-enforced by foreign government restrictions. Seaboard believes that these proposals would destroy the economics of these initiatives, and would divert the Board from giving Seaboard's initiatives needed priority consideration.

These two scheduled all-cargo carriers claim that their main source of freight traffic is subject to diversion from the proposed split charters. Seaboard states that in the transatlantic market, the vast majority of its traffic (by weight 79 percent, and by revenue 75 percent) is of shipment sizes of 5,000 pounds or more. FTL states that during the first 11 months of 1977, almost 50 percent of its domestic, and

---

[4] *American Airlines* v. *Civil Aeronautics Board*, 348 F. 2d 349 (D. C. Cir. 1969); *Trans World Airlines* v. *Civil Aeronautics Board*, 545 F. 2d 771 (2d Cir. 1976).

[5] See, Supplemental Air Service Proceeding, 45 C.A.B. 231 (1966); ER-659, January 29, 1971, Extension of Charter Regulations (36 FR 2486); Automotive Cargo Investigation, Order 76-6-182, June 29, 1976.

52 percent of its international, traffic consisted of shipments of 5,000 pounds or more. Nor, claim the opponents, is there any evidence of traffic-generating potential from the authorization of split charters. All of the opponents cite past Board precedent and statements to the effect that the authorization of split cargo charters could cause diversion and be detrimental to the continued provisions of scheduled all-cargo service. As for the proposed split passenger-cargo charters, FTL argues that this cargo space could be marketed at marginal cost and be defrayed by the passenger service side of the charter, thereby increasing the potential for diversion.

The opponents also argue that the proposals are illegal under the Act because they blur the legal distinction between charter and individually waybilled service in the cargo market. The limitations proposed by the petitioners, such as itineraries and size restrictions, are meaningless, they argue even if the entire capacity of the aircraft is chartered, since the shipment size limit is well within the typical sizes of individually waybilled service provided by the scheduled carriers.

Several of the arguments presented by the opponents directly counter the claims of the supplementals. For example, FTL claims that TIA/World's argument that split charter authority is needed to protect the domestic freight market of the supplemental carriers is illusory, since domestic cargo charters account for only 3 percent of the supplemental's operating revenues. In fact, claims FTL, the supplementals have increased their cargo operations under the present regulations in just the last year.

The Board has concluded that there has been a sufficiently persuasive showing that the question of split all-cargo charters and split passenger-cargo charters should be fundamentally re-examined. Previous requests for split cargo charters have been denied by the board, primarily on the basis of possible diversion from scheduled cargo services. In 1971, though, the Board did state that to remove the plane-load cargo charter requirement would eliminate the only regulatory requirement which inhibits supplemental carriers from offering individually waybilled cargo services.[6] Since that time, however, the courts have stated that the Board may define charter service according to experience and changing circumstances, as the petitioners remind us.

In addition, Congress has since that time substantially relaxed the regulation of all-cargo carriers, which will have a definite competitive impact on the development of the domestic charter cargo market. This statutory change expresses the Congressional intent to eliminate the policies in the all-cargo area that have tended to insulate prices and services from competition. It is our tentative decision that the rules proposed here will work in the same direction.

It is also our tentative conclusion that, in the proper circumstances, split cargo charters are legally permissible under the Act, and that the full plane-load requirement by a single charterer is no longer necessary to protect the integrity of scheduled cargo service. Section 101(36) of the Act characterizes charter trips, in part, as "supplementary" to scheduled service. While the courts and the Board have defined passenger charter trips in terms of individually ticketed versus group travel, it is our tentative opinion that this type of criterion may not be applicable to cargo charter services, or adequate for their definition. TIA/World speak of the placement of the economic risk of cancellation as an appropriate standard, while the opponents of expanded cargo charter authority similarly look to diversion as the key concept. However, the impact of cargo charters on scheduled service is not a part of the statutory definition, and does not become significant for definitional purposes unless charter service begins to supplant scheduled service.

The Board in the past has not spoken in depth on the definition of cargo charter service, and specifically asks the public to focus on how to define it so that the individual shipper has maximum flexibility in the use of air transportation, both supplemental and scheduled carriers are not saddled with unnecessary restrictions on their operating flexibility, and adequate scheduled service is maintained. Although petitioners request a 5,000 pound limit on split charter shipments and certain other restrictions, we have decided that our re-examination of the entire issue will be more complete if specific minimums and restrictions are not included in the text of the proposed rule. Having wrestled with determining what are, in effect, arbitrary limits on the minimum size of shipments and the number of charterers to be permitted on a split cargo charter, the board has also tentatively decided that it would be best for the air cargo industry as a whole to set such limits or restrictions, if needed, at the minimum level consistent with our statutory duty as stated above.[7]

In their comments, then, those persons responding to this notice should address themselves to the following questions, on the basis of their perceptions of both the economics of the air cargo market and the limits of our statutory authority:

1. What should be the minimum size, if any, for shipments by a single charterer on a split cargo charter?

2. Should there be a maximum number of split charterers permitted on each flight and, if so, how many?

3. Should more than one charter be permitted to contract for the belly capacity of a split passenger/cargo charter?

The Board has placed the petitioners' suggested restrictions in brackets in the text of the proposed rules only to indicate a possible format. This in no way is meant to indicate the Board's opinion or tentative approval of these restrictions.

Although the proposed rules apply to both domestic and international operations, the Board also specifically asks for comment on whether, in view of the concerns of FTL and Seaboard, the split all-cargo charters and/or split passenger/cargo charters should be authorized in international air transportation, and, if so, whether they should be more restricted than those authorized in domestic air service. Also, in reviewing the rules for split charters proposed here, persons responding should, in addition to the issues discussed previously, direct their comments toward the possible development of tarif guidelines for equitable assessment of charges on split cargo charters, and for charges, control route diversion and delay on split passenger/cargo charters,[8] and the question, with supporting data, of traffic diversion or generation potential of the split cargo charter proposals.

Those commenting should note that the proposed rules include wording to make it clear that the authority to charter the unused cargo capacity of a passenger charter flight is permissive, and that the failure to charter this capacity, therefore, will not cause (or permit) cancellation of the flight if the entire passenger capacity is chartered. The Board asks the public to focus on this very carefully.

Proposed Rules

The Board proposes to amend parts 207, 208, and 212, of its Economic Regulations (14 CFR parts 207, 208, 212) as follows:

[6] Extension of Charter Regulations, ER-659, dated Jan. 29, 1971 (36 FR 2486).

[7] By EDR-348/SPDR-64 (43 FR 11215, 3-17-78), the Board recently proposed to eliminate the minimum group size for split passenger charters, which would completely revise the text of the rules proposed here. In commenting on whether there need be a size limit on split cargo charters and if so, at what limit, the public should not be bound by the format of the proposed text.

[8] Commenters should consider notice of proposed rulemaking ERD-332/SPDR-60, dated August 23, 1977 (42 FR 43409), by which the Board proposes to exempt air carriers from filing tariff rates for charter operations in interstate and overseas air transportation, although the carriers would still be required to file tariffs for the rules, regulations, and practices of such operations.

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

1. Section 207.11 of part 207 would be amended by amending paragraph (c) and adding new paragraphs (d) and (e) to read as follows:

§ 207.11 Charter flight limitations.

* * * * *

(c) Air transportation performed on a time, mileage, or trip basis where less than the entire capacity of an aircraft has been engaged for the movement of persons and their personal baggage and/or the movement of property, except that such persons in the aggregate must engage the entire capacity of the aircraft in accordance with paragraph (d) of this section:

* * * * *

(9) By an air freight forwarder or international air freight forwarder holding a currently effective operating authorization under part 296 of this subchapter for the carriage of property in air transportation; by a cooperative shippers association currently in compliance with the relevant provisions of part 296 of this subchapter; by a person authorized by the Board to transport by air used household goods of personnel of the Department of Defense; with respect to flights from the United States in foreign air transportation, by a foreign air freight forwarder holding a currently effective permit issued by the Board under section 402 of the Act; and with respect to flights to the United States in foreign air transportation, by any foreign air freight forwarder.

(d) (1) Each person engaging less than the entire capacity of an aircraft for the movement of persons and their personal baggage pursuant to subparagraphs (6), (7), and (8) of paragraph (c), shall contract and pay for 20 or more seats. Each person engaging less than the entire capacity of an aircraft for the movement of persons and their personal baggage pursuant to subparagraphs (1), (2), (3), (4), and (5) of paragraph (c), shall contract and pay for 40 or more seats, except that if the entire capacity of an aircraft having less than 80 seats is engaged by no more than two persons described in subparagraphs (1)–(8) of paragraph (c) for the movement of persons and their baggage, then either one of such persons may contract and pay for a minimum of 20 seats.

(2) Each person engaging less than the entire capacity of an aircraft for the movement of property pursuant to paragraph (c) of this section shall contract and pay for [no less than 5,000 pounds, or the equivalent cubic capacity, or cargo capacity of the aircraft. The maximum number of charters for the entire capacity of an aircraft for the movement of property shall be as follows: no more than two persons shall engage the entire capacity of an aircraft having less than 20,000 pounds cargo capacity; no more than three persons shall engage the entire capacity of an aircraft having more than 20,000 pounds, but less than 60,000 pounds, cargo capacity; for aircraft having 60,000 pounds or greater cargo capacity, the maximum number of persons permitted to engage the entire capacity of the aircraft is determined by dividing the total cargo capacity by 20,000 pounds; except that if the aircraft is also engaged for the movement of persons, no more than one person shall engage the entire cargo capacity for the movement of property].

(e) For the purposes of this section, the entire capacity of an aircraft shall be considered as engaged if its main deck capacity is engaged, regardless of whether the remaining belly or other capacity is also engaged.

PART 208—TERMS CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

2. Section 208.6 of part 208 would be amended by amending paragraph (c) and adding new paragraphs (d) and (e) to read as follows:

§ 208.6 Charter flight limitations.

* * * * *

(c) Air transportation performed on a time, mileage, or trip basis where less than the entire capacity of an aircraft has been engaged for the movement of persons and their personal baggage and/or the movement of property, except that such persons in the aggregate must engage the entire capacity of the aircraft in accordance with paragraph (d) of this section:

* * * * *

(9) By an air freight forwarder or international air freight forwarder holding a currently effective operating authorization under part 296 of this subchapter for the carriage of property in air transportation; by a cooperative shippers association currently in compliance with the relevant provisions of part 296 of this subchapter; by a person authorized by the Board to transport by air used household goods of personnel of the Department of Defense; with respect to flights from the United States in foreign air transportation, by a foreign air freight forwarder holding a currently effective permit issued by the Board under section 402 of the Act; and, with respect to flights to the United States in foreign air transportation, by any foreign air freight forwarder.

(d) (1) Each person engaging less than the entire capacity of an aircraft for the movement of persons and their personal baggage pursuant to subparagraphs (6), (7), and (8) of paragraph (c), shall contract and pay for 20 or more seats. Each person engaging less than the entire capacity of an aircraft for the movement of persons and their personal baggage pursuant to subparagraphs (1), (2), (3), (4), and (5) of paragraph (c) shall contract and pay for 40 or more seats, except that if the entire capacity of an aircraft having less than 80 seats is engaged by no more than two persons described in subparagraphs (1)–(8) of paragraph (c) for the movement of persons and their baggage, then either one of such persons may contract and pay for a minimum of 20 seats.

(2) Each person engaging less than the entire capacity of an aircraft for the movement of property pursuant to paragraph (c) of this section shall contract and pay for [no less than 5,000 pounds, or the equivalent cubic capacity, of cargo capacity of the aircraft. The maximum number of charters for the entire capacity of an aircraft for the movement of property shall be as follows: no more than two persons shall engage the entire capacity of aircraft having less than 20,000 pounds cargo capacity; no more than three persons shall engage the entire capacity of an aircraft having more than 20,000 pounds, but less than 60,000 pounds, cargo capacity; for aircraft having 60,000 pounds or greater cargo capacity, the maximum number of persons permitted to engage the entire capacity of the aircraft is determined by dividing the total cargo capacity by 20,000 pounds; except that if the aircraft is also engaged for the movement of persons, no more than one person shall engage the entire cargo capacity of the aircraft for the movement of property].

(e) For the purposes of this section, the entire capacity of an aircraft shall be considered as engaged if its main deck capacity is engaged, regardless of whether the remaining belly or other capacity is also engaged.

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

3. Section 212.8 of part 212 would be amended by amending paragraph (b) and adding new paragraphs (c) and (d) to read as follows:

§ 212.8 Charter flight limitations.

* * * * *

(b) Where less than the entire capacity of an aircraft has been engaged for the movement of persons and their personal baggage and/or for the movement of property, on a time, mileage, or trip basis, by two or more of the following persons; except that such persons in the aggregate must engage the

entire capacity of the aircraft in accordance with paragraph (c) of this section:

* * * * *

(9) By an air freight forwarder or international air freight forwarder holding a currently effective operating authorization under part 296 of this subchapter; by a person authorized by the Board to transport by air used household goods of personnel of the Department of Defense; with respect to flights from the United States in foreign air transportation, by a foreign air freight forwarder holding a currently effective permit issued by the Board under section 402 of the Act; and, with respect to flights to the United States in foreign air transportation, by any foreign air freight forwarder.

(c) (1) Each person engaging less than the entire capacity of an aircraft for the movement of persons and their baggage pursuant to subparagraphs (6), (7), and (8) of paragraph (b), shall contract and pay for 20 or more seats. Each person engaging less than the entire capacity of an aircraft for the movement of persons and their personal baggage pursuant to subparagraphs (1), (2), (3), (4), and (5) of paragraph (b) shall contract and pay for 40 or more seats, except that if the entire capacity of an aircraft having less than 80 seats is engaged by no more than two persons described in subparagraphs (1)–(8) of paragraph (b) for the movement of persons and their baggage, then either one of such persons may contract and pay for a minimum of 20 seats.

(2) Each person engaging less than the entire capacity of an aircraft for the movement of property pursuant to paragraph (b) of this section shall contract and pay for [no less than 5,000 pounds, or the equivalent cubic capacity, of cargo capacity of the aircraft. The maximum number of charters for the entire capacity of an aircraft for the movement of property shall be as follows: no more than two persons shall engage the entire capacity of aircraft having less than 20,000 pounds cargo capacity; no more than three persons shall engage the entire capacity of an aircraft having more than 20,000 pounds, but less than 60,000 pounds cargo capacity; for aircraft having 60,000 pounds or greater cargo capacity, the maximum number of persons permitted to engage the entire capacity of the aircraft is determined by dividing the total cargo capacity by 20,000 pounds; except that if the aircraft is also engaged for the movement of persons, no more than one person shall engage the entire cargo capacity of the aircraft for the movement of property].

(d) For the purposes of this section, the entire capacity of an aircraft shall be considered as engaged if its main deck capacity is engaged, regardless of whether the remaining belly or other capacity is also engaged.

(Secs. 204, 401, 402, 404 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754, 757, 766; 49 U.S.C. 1324, 1371, 1372, 1374.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-9150 Filed 4-5-78; 8:45 am]

[6320-01]

[14 CFR Parts 241, 245, 246]

[EDR-331D; Docket 31205]

MODEL CORPORATE DISCLOSURE REGULATIONS

Termination of Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Notice of termination of rulemaking.

SUMMARY: This notice terminates the rulemaking proceeding that considered the need for model corporate disclosure regulations (model rules). This action is taken because of the lack of a demonstrated regulatory need at this time for additional corporate ownership and control data, the general public opposition to the adoption of the model rules, and because the model's goal of uniformity among regulatory agencies is not likely to be achieved.

DATED: March 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Accounts and statistics, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5270.

SUPPLEMENTARY INFORMATION: On July 28, 1977, the Board issued an advance notice of proposed rulemaking, which asked for public comments on whether the Board should adopt the model corporate disclosure regulations. The model rules were developed in 1975 by the Interagency Steering Committee on Uniform Corporate Reporting[1] to improve the quality and uniformity of corporate reporting to the Federal government. The model rules call for increased disclosure by regulated companies as to the beneficial ownership of the voting stock, corporate structure, affiliations of officers and directors, and debt holdings.[2a]

In issuing the advance notice, the Board did not cite any specific regulatory need for addition corporate disclosure requirements. It did note, however, that the Board is now conducting an informal investigation entitled the Institutional Control of Air Carriers Investigation, Docket 26348, which includes many of the issues addressed by the model corporate disclosure regulations. The Board also stated that it was sympathetic to the goals of the model rules and wanted public comments on the desirability of adopting them, in whole or in part, pending the outcome of the institutional control case. In soliciting comments, the Board stated that it was especially interested in obtaining views on three aspects of the model rules: (1) The extent of the regulatory need for the information that would be produced; (2) whether the public interest in obtaining the information would justify the added reporting that would be imposed; and (3) whether the Board's statutory authority would support the adoption of the model rules.

The Board received nineteen responses to the advance notice,[2] of which seventeen opposed adoption of the model rules. The supporting comments were received from the Aviation Consumer Action Project (ACAP) and the late U.S. Senator Lee Metcalf.

The opposing respondents objected to the model rules on the grounds that: (1) The regulatory need for the additional information had not been shown and (2) the burdens that would be imposed by the regulations would far outweigh any benefits obtained. These respondents were particularly opposed to the shareholder reporting provisions of the model rules and raised substantial legal and practical

---

[1] The Interagency Steering Committee on Uniform Corporate Reporting was comprised of representatives of nine Federal agencies, including Civil Aeronautics Board and the U.S. General Accounting Office. The Committee disbanded in 1975 after drafting the model rules.

[2a] See EDR-331, 42 FR 39115, August 2, 1977; see also EDR-331A, 42 FR 42691 42 FR 55823, October 19, 1977.

[2] The respondents were: The Air Transport Association of America on behalf of 10 certificated route air carriers (Continental Air Lnes, Inc., Eastern Air Lines, Inc., the Flying Tiger Line Inc., Frontier Airlines, Inc., Hughes Air Corp., d.b.a. Hughes Airwest, National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., and Western Air Lines, Inc.); the Aviation Consumer Action Project; Aerlinte Eireann Teoranta; the American Leadership Study Groups; Brendan Tours, Inc.; Charter Travel Corp.; Bruce Duncan Co., Inc., and Duncan Tours, Inc.; Pan American World Airways, Inc.,; Finnair; TAP Portuguese Airways; Delta Air Lines, Inc.; CP Air Freight; DCI International and Delta California Industries; the American Bankers Association; United Air Lines, Inc.; Hughes Air Corp., d.b.a. Hughes Airwest; V. R. Davis; Continental Illinois National Bank & Trust Co. of Chicago; and the late U.S. Senator Lee Metcalf.

questions relating to the feasibility of their implementation.

None of the opposing respondents felt that there was a regulatory need for the type of extensive reporting called for in the model rules. Instead, many respondents expressed the view that the Board's current reporting requirements provide ample information for the Board to carry out its regulatory responsibilities. A few, like Delta and Hughes Airwest, questioned how the Board would use the information once it was received. In a direct comment on stockholder reporting, Delta pointed out that for many carriers, the thirty largest stockholders hold a percentage so small as to be meaningless in terms of control.

Virtually all of the respondents who opposed the adoption of the model rules stated that the burdens associated with reporting the new information would far outweigh any public interest in disclosing it. The carriers declared that a considerable amount of the same information required under the model rules is already being submitted to the Board and that difficult extraction and production problems would be encountered in obtaining the additional information. These comments on burden applied not only to the stockholder reporting, but to the model rules as a whole.

The respondents who addressed the legal issues pointed out that in the process of obtaining information to report their top 30 shareholders, carriers would be required to obtain information on beneficial owners and voting rights from banks and brokers. The Air Transport Association of America, and Delta expressed the view that carriers would not be able to compel banks or brokers to obtain information on beneficial owners or voting power. The American Bankers Association (ABA) expressed the view that the Federal Aviation Act clearly indicates that 5 percent is the minimum level at which the public interest justifies the disclosure of individual shareholdings.[3] Moreover, the ABA commented that most banks would be reluctant to disclose the identify of persons for whom they hold stock because of traditional policy to protect customer privacy and because, in most States, it would be unlawful to disclose this information except when responding to legal process.

In contrast to the other respondents, ACAP stated that CAB control reports are "incomplete, confusing, and often meaningless" because carriers have been reporting "nominees" and "street names" as stockholders in their reports under Part 241. When these "nominee" and "street names" are reported at stockholders, the entities listed as the persons for whose account the stock is held generally fall into three categories: (1) Brokerage firms who hold stock owned beneficially by a customer; (2) banks, insurance companies or other financial institutions who hold stock for their own account or for the account of customers; or (3) clearing agencies and/or securities depositories who are able to settle transactions among their participants (brokers, financial institutions, fiscal agents) by book entry without physical delivery. ACAP expressed the view that the model rules would provide a more accurate and complete picture of ownership interests and recommended their adoption with some modifications[4] before the conclusion of the institutional control case. ACAP pointed out that the Board could make necessary adjustments to the newly adopted regulations when it receives the final recommendations of that Case.

The late Senator Metcalf endorsed each and every provision of the model and also urged the Board to adopt them prior to the outcome of the institutional control case. His comment cited at length deficiencies in reporting which the model rules would correct and expressed his view that Congress had provided the Board with sufficient power to obtain all of the information on shareholdings, corporate structure, affiliations of officers and directors, and debt obligations that the model would require.

We have, however, decided to terminate this rulemaking proceeding based on the following considerations.

The Interagency Steering Committee on Uniform Corporate Reporting had two major goals when it developed the model rules: (1) To enhance the quality of corporate ownership and control information supplied to the Government; and (2) to create uniform corporate disclosure regulations among the regulatory agencies. It now appears unlikely that uniformity can be achieved, since the other regulatory agencies that have formally considered the model (i.e., the Federal Communications Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission) have failed to adopt some or all of it.

Nor does the Board believe that a pressing need for an immediate change in corporate disclosure requirements has been demonstrated in this proceeding. We are aware of the weaknesses in our current reporting requirements and we intend to address those weaknesses at the conclusion of the institutional control case. At that time, we may adopt all or part of the model rules. For now, however, the lack of a pressing need, the substantial opposition to the model, the legal questions which have been raised over the Board's authority to expand reporting in line with the model, and the fact that the institutional control case is also pending before us, lead us to conclude that adoption of the model rules is not an appropriate course of action.

Accordingly, the rulemaking proceeding in Docket 31205 is terminated.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-9040 Filed 4-5-78; 8:45 am]

[3] Subsection 407(b) of the Federal Aviation Act, 49 U.S.C. and 1377(b), requires the reporting of shareholders holding more than 5 percent of each carrier's shares.

[4] ACAP suggested that listing 15 rather than 30 of the top shareholders may be sufficient for the Board's regulatory needs.

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

ROLAND INTERNATIONAL CORP. ET AL.

Withdrawal of Provisionally Accepted Consent Agreement

AGENCY: Federal Trade Commission.

ACTION: Withdrawal of Provisionally Accepted Consent Agreement; Closing of Matter.

SUMMARY: The Federal Trade Commission has unanimously withdrawn its provisional acceptance of a proposed consent agreement citing a Miami, Fla., real estate developer and two subsidiaries with alleged deceptive sales practices in connection with the sale of land.

FOR FURTHER INFORMATION CONTACT:

S. Edward Combs, Regional Director, Atlanta Regional Office, Room 1000, 1718 Peachtree Street NW., Atlanta, Ga. 30309, 404-881-4836.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission has unanimously withdrawn its provisional acceptance of a proposed consent order citing Roland International Corp.. 8101 Biscayne Boulevard, Miami, Fla., and two subsidiaries. The proposed order appeared in FEDERAL REGISTER for March 31, 1977, 42 FR 17175.

The investigation involved alleged use of deceptive sales practices in connection with the sale of land. On March 30, 1977, the Commission had placed on the public record for comments a consent agreement entered into by the firms. Upon further review, the Commission has decided to close the matter. However, it reserved the right to take such further action as the public interest may require.

The Commission's action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation

should not be construed as a determination that a violation has occurred.

By direction of the Commission dated March 7, 1978.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-9093 Filed 4-5-78; 8:45 am]

[8320-01]

VETERANS ADMINISTRATION

[41 CFR Chapter 8]

PROCUREMENT

Miscellaneous Changes

AGENCY: Veterans Administration.

ACTION: Proposed Regulations.

SUMMARY: It is proposed to revise the VA Procurement Regulations by specifying that maintenance of contract files will satisfy certain record requirements in the Federal Procurement Regulations (FPR); revoking obsolete material; correcting a cross-reference; updating an organizational title; reflecting agency policy of using precise terms denoting gender; and prescribing the use of new contract clauses. These changes are proposed in order to increase administrative and property management efficiency.

DATE: Comments must be received on or before May 5, 1978.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during normal business hours until May 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Chris A. Figg, Policy and Interagency Staff, Supply Service, Veterans Administration, Washington, D.C. 20420, 202-389-2334.

SUPPLEMENTARY INFORMATION: The Veterans Administration proposes to revise §8-2.201 by deleting a reference to an FPR section which has been deleted by FPR Amendment 153. Section 8-2.204 is revised to specify that maintenance of the contract file and retention of canceled IFB file will fulfill the requirements of FPR 1-2.204. Section 8-7.150-24 is revised to change the section title; to prescribe the usage of VA Specification No. X-1711 for bids and proposals for technical medical equipment and devices; and to revoke a paragraph pertaining to the guarantee clause which is relocated in new §8-7.150-25. It is hoped that this change will ensure that required maintenance and service manuals will be supplied with the purchase of medical equipment. Section 8-7.600 is revised to correct an erroneous cross-reference. Section 8-7.650-6 is revised to add a new paragraph which will require contractors to guarantee corrective work and replacement parts to the same extent as that originally prescribed, thereby ensuring the efficacy of such corrective work and parts. Section 8-7.650-8 is revised to update an organizational title. Sections 8-2.201, 8-7.650-3, 8-7.650-5, 8-7.650-6, 8-7.650-9, 8-7.650-10, 8-7.650-12, 8-7.650-13 and 8-7.650-14 are revised to reflect the agency policy of using precise terms denoting gender.

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the same address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until May 15, 1978. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: March 29, 1978.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

1. In §8-2.201, paragraphs (a), (c), (d)(3) and (e)(3) are revised and paragraph (g) is revoked. The revised material reads as follows:

§8-2.201 Preparation of invitations for bids.

(a) Invitations for bids for supplies, equipment and services will be serially numbered at the time of issue. The number will consist of the station or marketing division number, the serial number of the invitation, and the fiscal year in which issued, e.g., 101-25-78. A new series beginning with the number 1 will be started each fiscal year. Invitations for bids for supplies, equipment and services which are issued, accepted, and become contracts in the same fiscal year but, because of procurement leadtime, will not be performed until the ensuing fiscal year will be numbered in the series of the year in which they are issued. However, invitations issued in one fiscal year that will result in a contract that will become effective and performed only in the ensuing fiscal year will be numbered in the ensuing fiscal year series.

* * * * *

(c) In order to preclude adverse criticism of the Veterans Administration by prospective bidders relative to disclosure of bid prices prior to bid opening, the following provision will be prominently placed in all invitations for bids:

CAUTION TO BIDDERS—BID ENVELOPES

It is the responsibility of each bidder to take all necessary precautions including the use of a proper mailing cover, to insure that the bid price cannot be ascertained by anyone prior to bid opening. If a bid envelope is furnished with this invitation, the bidder is requested to use this envelope in submitting the bid. The bidder may, however, when it suits a purpose, use any suitable envelope, identified by the invitation number and bid opening time and date. If a bid envelope is not furnished, the bidder will complete and affix the enclosed Optional Form 17, Sealed Bid Label, to the lower left hand corner of the envelope used in submitting the bid.

(d) * * *

(3) Invitations containing a summary bid request will contain the following statement:

The award will be made on either an individual item basis or summary bid basis, whichever results in the lowest cost to the Government. Therefore, to assure proper evaluation of all bids, a bidder quoting a summary bid price must also quote a price on each individual item included in the summary bid price.

(e) * * *

(3) In addition to the clause in subparagraph (1) or (2) of this paragraph, the following clause will be included in the invitation when bids will be allowed on different packaging, unit designation, etc.

ALTERNATE PACKAGING AND PACKING

The bidder's offer must clearly indicate the quantity, package size, unit, or other different feature upon which the quote is made. Evaluation of the alternate or multiple alternates will be made on a common denominator such as per ounce, per pound, etc., basis.

* * * * *

(g) [Revoked].

2. In §8-2.204, paragraph (b) is revised to read as follows:

§8-2.204 Records of invitations for bids and records of bids.

* * * * *

(b) Maintenance of the contract file prescribed by §8-1.313-54 and retention of canceled Invitation for Bid files will fulfill the requirements set forth in FPR 1-2.204.

3. Section 8-7.150-24 is revised and §8-7.150-25 is added so that the added and revised material reads as follows:

§ 8–7.150–24 Requirements for operating and maintenance manuals.

(a) Solicitations and requests for proposals for technical medical equipment and devices issued by a field station will normally require the contractor to provide operating and maintenance manuals. Unless the station Chief, Engineering Service, indicates that such service manuals are not needed, each invitation for bid or request for proposal for technical medical equipment will include VA Specification No. X-1711, Documentation, Technical Service, for Technical Medical Equipment and Devices, as a requirement. The number of such manuals required will be specified in both the solicitation and the resulting purchase order.

(b) Solicitations and requests for proposals for mechanical equipment (other than technical medical equipment and devices) issued by a field station will include the following clause:

Service data manual. The contractor agrees to furnish two copies of a manual, handbook or brochure containing operating, installation, and maintenance instructions (including pictures or illustrations, schematics, and complete repair/test guides as necessary). Where applicable, it will include electrical data and connection diagrams for all utilities. The instructions shall also contain a complete list of all replaceable parts showing part number, name, and quantity required.

(c) When the bid or proposal will result in the initial purchase (including each make and model) of a centrally procured item, the following clause will be used:

Service data manual. The contractor agrees, when requested by the contracting officer, to furnish not more than five copies of the technical documentation required by VA Specification X-1711 to the Service and Reclamation Division, VA Supply Depot, Hines, Ill. In addition, the contractor agrees to furnish two copies of the technical documentation required by VA Specification X-1711 with each piece or equipment sold as a result of the invitation for bid or request for proposal.

§ 8–7.150–25 Guarantee clause.

(a) When the bid or proposal will result in any purchase, the following clause will be used:

Guarantee. The contractor guarantees the equipment against defective material, workmanship and performance for a period of ——,[1] said guarantee to run from date of acceptance of the equipment by the Government. The contractor agrees to furnish, without cost to the Government, replacement of all parts and material which are found to be defective during the guarantee period. Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the purchasing officer if installation is outside of the continental United States. Cost of installation of replacement material and parts shall be borne by the contractor.[2]

(b) Where it is industry policy to furnish, but not install, replacement material and parts at the contractor's expense, the last sentence will be changed to indicate that cost of installation shall be borne by the Government. Where it is industry policy to (1) guarantee components for the life of the equipment (i.e., crystals in transmitters and receivers in radio communications systems) or (2) require that highly technical equipment be returned to the factory (at contractor's or Government's expense) for replacement of defective materials or parts, the clause used will be compatible with such policy.

4. In § 8–7.600, paragraph (c) is revised to read as follows:

§ 8–7.600 Scope of subpart.

* * * * *

(c) Clauses inconsistent with those contained in FPR 1–7.6 and this subpart, but considered essential to the procurement of Veterans Administration requirements, shall not be used unless the deviation procedure set forth in § 8–1.109–2 has been complied with.

* * * * *

5. Section 8–7.650–3 is revised to read as follows:

§ 8–7.650–3 Work to be executed by contractor's forces.

(a) The contractor shall execute on the site, with his/her forces (exclusive of executive, supervisory and clerical forces), actual contract construction work equivalent to not less than[1] —— percent of the contract award price.

(b) Construction work shall consist of contract work accomplished on the site by laborers, mechanics, and foremen/forewomen on the Contractor's payroll and under his/her direct supervision. Cost of material and equipment installed by such labor may be included in the above percent of work required to be performed by the Contractor.

(c) The Contractor shall submit, simultaneously with schedule of costs required by Payment to Contractor provision of the General Conditions of these specifications, a statement designating the branch or branches of contract work to be performed with his/her forces. The approved schedule of costs will be used in determining value of a branch or branches, or portions thereof, of the work for the purpose of this article.

(d) If, during the progress of work hereunder, the contractor requests a change in the branch or branches of the work to be performed by his/her forces and the Contracting Officer determines it to be in the best interests of the Government, the Contracting Officer may, at his/her discretion, authorize a change in such branch or branches of said work. Nothing contained herein shall permit a reduction in the percentage of work to be performed by the contractor with his/her forces, it being expressly understood that this is a contract requirement without right or privilege of reduction.

(e) In the event the contractor fails or refuses to meet the requirement of paragraph (a) of this section, it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement which is accomplished by others. For the purposes of this provision, it is agreed that 15 percent is an acceptable estimate of the Contractor's overhead and profit, or mark-up, on that portion of the work which the Contractor fails or refuses to perform, with his/her own forces, in accordance with paragraph (a) of this section.

6. In § 8–7.650–5, paragraph (c) of the clause is revised to read as follows:

§ 8–7.650–5 Inspection and acceptance.

Clause 10, General Provisions, SF 23A is supplemented as follows:

* * * * *

(c) Final inspection will not be made until the contract work is ready for beneficial use or occupancy. The Contractor shall notify the Contracting Officer, through the Resident Engineer, fifteen (15) days prior to the date on which the work will be ready for final inspection. Should it develop that the work installed does not justify such inspection at that time, or that the character of material or workmanship is such that reinspection is found necessary, the cost of such reinspection including salary of the inspector(s), his/her traveling and other expenses, shall be borne by the Contractor and will be deducted from any money due him/her on the applicable contract.

7. Section 8–7.650–6 is revised to read as follows:

§ 8–7.650–6 Guaranty.

GUARANTY

(a) Unless otherwise specifically provided for in the contract or specifications, the Contractor, notwithstanding any final inspection, acceptance or payment, guarantees that all work performed and materials and equipment furnished under this contract are in accordance with the contract requirements. The Contractor also guarantees that when installed all materials and equipment were free from defects and will remain so for a period of at least 1 year from the date of acceptance by the Government.

(b) If defects of any kind should develop during the period such guaranties are in force, the Contracting Officer shall immediately notify the Contractor in writing of such defects. The Government thereupon shall have the right, by a written notice to

[1]Normally, insert 1 year. If industry policy covers a shorter or longer period, i.e., 90 days or for the life of the equipment, insert such period.

[2]The above clause will be modified to conform to standards of the industry involved.

[1]The Contracting Officer shall insert one of the following: Thirty percent for boiler replacements and piping, new or replacement elevators, emergency generators and wiring, water tanks and towers; 20 percent for water tanks where piping alterations are required and for new buildings with reinforced concrete frames; all other types of construction, 15 percent.

that effect, to require the Contractor to repair or replace all inferior or defective work, material, or equipment or permit it to remain in place and assess the contractor the costs he/she (the Contractor) would have incurred had he/she been required to effect repair or replacement.

(c) Any correction or replacement of parts, materials, equipment, supplies or construction made pursuant to the provisions of this clause shall also be subject to the provisions of this clause to the same extent as parts, materials, equipment, supplies or construction originally installed. The warranty with respect to such new or corrected parts, materials, equipment, supplies or construction shall be equal in duration as that set forth in (a) above and shall run from the date that such parts, materials, equipment, supplies or construction are replaced or corrected and accepted by the Government.

(d) The Contractor guarantees to reimburse the government for, or to repair or replace, any damages to the site, buildings, or contents thereof that is caused by inferior or defective workmanship, or the use of inferior or defective materials or equipment in the performance of this contract. The Contracting Officer shall immediately notify the Contractor in writing when such damage occurs. The Government shall have the right to require the Contractor to repair or replace such damaged areas or equipment, or elect to permit such damage to remain as is and assess the Contractor the costs he/she would have incurred had he/she been required to effect repair or replacement.

(e) Should the Contractor fail to proceed promptly, after notification by the Contracting Officer, to repair or replace any inferior or defective work, material, or equipment, or damage to the site, buildings, or contents thereof, caused by inferior or defective work, or the use of inferior or defective materials, or equipment, the Government may have such work, material, equipment, or damage repaired or replaced and charge all costs incident thereto to the Contractor.

(f) Any special guaranties that may be required under the contractor, shall be subject to the elections set forth above unless otherwise provided in such special guaranties.

(g) The decision of the contracting Officer as to liability of the Contractor under this clause is subject to the appeal procedures provided for in the "Disputes clause of this Contract."

8. Section 8-7.650-8 is revised to read as follows:

§ 8-7.650-8 Reference to "Standards".

(a) Any materials, equipment, or workmanship specified by references to number, symbol, or title of any specific Federal, Industry or Government Agency Standard Specification shall comply with all applicable provisions of such standard specifications, except as limited to type, class or grade, or modified in contract specifications. Reference to "Standards" referred to in the contract specifications, except as modified, shall have full force and effect as though printed in detail in specifications.

(b) Federal Specification numbers refer to specifications issued by General Services Administration. Such specifications may be seen at the Office of Construction, Veterans' Administration, Washington, D.C. or at the office of the Resident Engineer for this project. An Index to the Specifications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Single copies of specifications may be obtained without charge for bidding purposes, from any GSA Business Service Center provided a copy of the Invitation for Bids is furnished. Multiple copies may be purchased only from GSA Specifications Branch, Building 197, Washington Navy Yard, Washington, D.C. 20407.

9. In § 8-7.650-9, paragraph (c) of the clause is revised to read as follows:

§ 8-7.650-9 Government supervision.

* * * * *

(c) Within the limits of any specific authority delegated by the Contracting Officer, the Resident Engineer may by written direction make changes in the work. The Contractor shall be advised of the extent of such authority.

10. Section 8-7.650-10 is revised to read as follows:

§ 8-7.650-10 Daily report of workers and material.

The contractor shall furnish to the Resident Engineer each day a consolidated report for the preceding work day in which is shown the number of laborers, mechanics, foremen/forewomen and pieces of heavy equipment used or employed by the contractor and subcontractors. The report shall bear the name of the firm, the branch of work which they perform such as concrete, plastering, masonry, plumbing, sheet metal work, etc. Report shall give breakdown of employees by crafts, location where employed, and work performed. The report shall also list materials delivered to the site on the date covered by the report.

11. In § 8-7.650-12, paragraphs (b) and (c) of the clause are revised to read as follows:

§ 8-7.650-12 Subcontracts and work coordination.

The following clause is for use except at provided in § 8-7.650-13.

SUBCONTRACTS AND WORK COORDINATION

* * * * *

(b) The Contractor shall be responsible to the Government for acts and omissions of his/her own employees, and of the subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers.

(c) The Government or its representatives will not undertake to settle any differences between the Contractor and subcontractors or between subcontractors.

* * * * *

12. Section 8-7.650-13 is revised to read as follows:

§ 8-7.650-13 Work coordination (alternate provision).

For new construction work with complex mechanical-electrical work, the following provision relating to work coordination may be substituted for paragraph (b) of the clause set forth in § 8-7.650-12:

The Contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The Contractor shall, in advance of the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes 2 inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than ⅜-inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproducibles) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades which will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the Contractor's planned method of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the Contractor and to the Government. In the event the Contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the Contracting Officer immediately. In doing so, the Contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor

in any area in which conflicts are disclosed by the coordination drawings until the conflicts have been corrected to the satisfaction of the Contracting Officer. It is the responsibility of the Contractor to submit the required drawings in a timely manner consistent with the requirement to complete the work covered by this contract within the prescribed contract time.

13. In § 8-7.650-14(a), paragraph (a)(2) of the clause is revised to read as follows:

§ 8-7.650-14 Payments to contractors.

(a) For contracts that do not contain a section entitled "Network Analysis Systems (NAS), Clause 7, General Provisions, SF 23A," will be implemented as follows:

PAYMENTS TO CONTRACTORS

Clause 7, General Provisions, SF 23A, is implemented as follows:

(a) * * *

(2) Costs as shown by this schedule must be true costs and, should the resident engineer so desire he/she may require the contractor to submit the original estimate sheets or other information to substantiate detail makeup of schedule.

* * * * *

[FR Doc. 78-8826 Filed 4-5-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1241]

REPORTING REQUIREMENT FOR CERTAIN CLASS I CARRIERS IN EACH MODE

Notice of Study

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Study.

SUMMARY: The Bureau of accounts is considering a certification reporting requirement for certain class I carriers in each mode. Views and comments on the concept of certification reporting and the tentative proposal for this reporting requirement are requested.

DATES: Views and comments are requested by April 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Bryan Brown, Jr., Chief, Section of Accounting, Interstate Commerce Commission, 12th and Constitution Avenue NW., Room 6113, Washington, D.C. 20423, phone, 202-275-7448.

SUPPLEMENTARY INFORMATION: The Bureau of Accounts is studying a reporting revision that would require certain carriers to submit a certified statement from an independent public accountant attesting to the conformity of the primary financial statements and selected schedules in the annual report with Commission accounting and reporting rules. The objective of this study is to develop a supplemental compliance procedure that will provide a continuous record of carrier compliance, promote efficient and effective interpretation of financial data and facilitate early resolution of questionable accounting and reporting practices.

To further our research we are requesting comments and suggestions on the concept of certification reporting, modes and carrier classifications to be affected, an operating revenue guideline for exemption of certain carriers within a given mode, impact of the requirement on the scope of annual examinations by independent public accountants, incremental accounting fees and costs, selected supporting schedules, format of attestation letter, and any other relevant matters. We are also interested in comments on the development of a Commission prescribed audit program to facilitate compliance audit work by independent public accountants. This discussion is intended solely for comment and does not order changes to the reporting regulations.

BACKGROUND

The diversity and complexity of carrier operations has significantly impacted the compliance responsibilities of the Commission. Integrated operations with affiliates, subsidiary formation and conglomerate mergers have all contributed to an increased compliance responsibility. To meet and better achieve this responsibility, it has become necessary to develop supplemental compliance procedures.

The certification reporting requirement is one alternative. Such a requirement has been employed by the Federal Power Commission (FPC) since 1970. The FPC has found this requirement to be an effective and relatively non-burdensome means of supplementing compliance procedures.

TENTATIVE REQUIREMENT

If the concept of certification reporting is deemed desirable we would consider limiting the requirement to class I carriers in each mode. We would further consider limiting the requirement to those carriers in each mode with annual operating revenues of $50 million or more.

These carriers usually engage independent public accountants for accounting, auditing, tax, and management advisory services. These carriers could meet the certification reporting requirement by having their independent public accounts expand the scope of their annual examination of the financial statements. We recognize that an expanded scope would undoubtedly result in incremental audit fees, but the extent of this increment is indeterminable at this time.

The certification would cover the primary financial statements and selected supporting schedules. Supporting schedules would include but, not be limited to, schedules of investments, property accounts and accumulated provisions for depreciation, amortization and depletion, long-term debt, tax accruals, inventories, reconciliations of reported net income with taxable income, officers salaries, operating revenues, depreciation, amortization and transactions with affiliates. A statement attesting to the conformity of the primary financial statements and selected supporting schedules would be required as an integral part of the annual report. An example of a proposed format for the attestation letter is included for discussion purposes in Appendix A.

BRYAN BROWN, Jr.
Chief, Section of Accounting.

APPENDIX A

PROPOSED ATTESTATION LETTER

In connection with our regular examination of the financial statements of ———, for the year ——, on which we have reported separately under the date of ————, we have also reviewed schedules ———— of —— Annual Report Form —— for the year filed with the Interstate Commerce Commission as set forth in its Uniform System of Accounts for ————, orders issued by the Commission, and with other accounting as prescribed in publications issued by the Commission. Our review for this purpose included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Based on this review, it is our opinion that the schedules identified in the preceding paragraph (except as noted below)[1] conform in all material respects with the accounting requirements of the Interstate Commerce Commission as set forth in its Uniform System of Accounts for ————, orders issued by the Commission, and with other accounting as prescribed in publications issued by the Commission.

[FR Doc. 78-9148 Filed 4-5-78; 8:45 am]

---

[1] Parenthetical phrase inserted when exceptions are to be reported.

notices

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

[3410-07]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Designation Number A588]

MICHIGAN

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, reaching, or aquaculture operations have been substantially affected in certain Michigan Counties as a result of various adverse weather conditions shown in the following chart:

Michigan, 8 counties

County	Excessive rainfall	Drought	Snow	Frost
Berrien	Aug. 1 through Oct. 31, 1977.		Nov. 25, 1977 through Jan. 11, 1978.	
Cheboygan	do			Aug. 20, 25, 1977, Sept. 11, 1977, Oct. 6, 1977.
Chippewa	Aug. 1 through Oct. 15, 1977.	Sept. 1, 1976 through June 30, 1977.		
Genesee	Aug. 1 to Oct. 18, 1977.	Aug. 1, 1976, to July 8, 1977.		
Iosco	July 2 through Oct. 31, 1977.	July 1, 1976 through July 1, 1977.		
Isabella	Aug. 1 through Sept. 30, 1977.	Apr. 1 through July 31, 1977.		
Presque Isle	Aug. 1 through Oct. 15, 1977.			Do.
St. Clair	Sept. 1 through Oct. 31, 1977.			

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904 Subpart C, Exhibit B, Paragraph V B, including th recommendation of Governor William G. Milliken that such designation be made.

Applications for emergency loans must be received by this Department no later than September 21, 1978, for physical losses and March 26, 1979, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subequent loans. The urgency of the need for loans in the designated areas makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 29 day of March, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration

[FR Doc. 78-9100 Filed 4-5-78; 8:45 am]

[3410-07]

[Designation Number A589]

NEW JERSEY

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following New Jersey Counties as a result of excessive rainfall November 1 through December 21, 1977, in Hunterdon County; and unusually heavy rains and wind November 6, 7, and 8, 1977, in Monmouth County.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904 Subpart C, Exhibit D, Paragraph V B, including the recommendation of Governor Brendan T. Byrne that such designation be made.

Applications for emergency loans must be received by this Department no later than September 21, 1978, for physical losses and March 26, 1979, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 30th day of March, 1978.

JAMES E. THORNTON,
Associate Administrator,
Farmers Home Administration.

[FR Doc. 78-9102 Filed 4-5-78; 8:45 am]

[3410-07]

[Designation No. A591]

MISSISSIPPI

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Mississippi Counties as a result of drought May 1 through June 20 and July 15 through August 15, 1977, in Coahoma County; and drought July 11 through September 5, 1977, in Quitman County.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904 subpart C, exhibit D, paragraph V B, including the recommendation of Governor Cliff Finch that such designation be made.

Applications for emergency loans must be received by this Department no later than September 21, 1978, for physical losses and March 26, 1979, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation

may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 29th day of March 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-9101 Filed 4-5-78; 8:45 am]

[3410-07]

[Designation No. A590]

TENNESSEE

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Tennessee Counties as a result of drought May 15 through September 15, 1977, in Fentress County; drought June 15 through August 15, 1977, and excessive rainfall September 1 through November 30, 1977, in McMinn County; drought June 1 through August 30, 1977, and excessive rainfall October 7 through October 9, 1977, in Morgan County; and excessive rainfall and unseasonably warm weather October 1 through December 31, 1977, in Wayne County.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904 subpart C, exhibit D, paragraph V B, including the recommendation of Governor Ray Blanton that such designation be made.

Applications for emergency loans must be received by this Department no later than September 21, 1978, for physical losses and March 26, 1979, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 29th day of March 1968.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-9103 Filed 4-5-78; 8:45 am]

[3410-11]

Forest Service

HUMBOLDT NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Humboldt National Forest Grazing Advisory Board will meet on May 23, 1978, at 10 a.m., P.d.s.t., at the Mountain City Ranger Station, Mountain City, Nev. Bring a sack lunch. The meeting is open to the public.

The purpose of the meeting is to discuss: 1. Allotment management planning. 2. Utilization of range betterment fund.

Dated: March 28, 1978.

JOE L. FRAZIER,
Acting Forest Supervisor.

[FR Doc. 78-9065 Filed 4-5-78; 8:45 am]

[3410-11]

Forest Service

ROCKY MOUNTAIN FRONT PLANNING UNIT

Extension of the Draft Review Period

The Forest Service, Department of Agriculture, has announced an extension of the review period for the draft environmental statement of the Rocky Mountain Front Planning Unit Land Management Plan, Forest Service Report Number USDA-FS-R1(15)-DES-Adm-78-1, until September 15, 1978.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor Kenneth D. Weyers, Lewis & Clark National Forest, Box 871, Great Falls, Mont. 59403. Comments should be received by September 15, 1978, in order to be considered in preparation of the Final Environmental Statement.

Dated: March 28, 1978.

JAMES E. REID,
Acting Regional Forester
Northern Region, Forest Service.

[FR Doc. 78-9126 Filed 4-5-78; 8:45 am]

[1505-01]

CIVIL AERONAUTICS BOARD

[Order 78-3-73; Docket 29591]

DONALD L. PEVSNER

Refund Provisions for Unused Tickets

Correction

In FR Doc. 78-7773, appearing on page 12052 in the issue for Thursday, March 23, 1978, in the heading, the Order number should be corrected to read as set forth above.

[6320-01]

[Docket No. 31371; Order 78-3-154]

TRANS WORLD AIRLINES, INC.

Order for Amendment of its Certificate of Public Convenience and Necessity for Route 2

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 30th day of March 1978.

On September 9, 1977, Trans World Airlines filed an application in Docket 31371 for amendment of its certificate of public convenience and necessity for Route 2 so as to authorize it to provide one-stop single plane service between Miami, Tampa, and Atlanta, on the one hand, and points on the remainder of its route system west of Kansas City, Mo., on the other. [1] The application was accompanied by a petition for the issuance of an order to show cause why the request should not be granted without a hearing.

In support of its petition, TWA makes the following case. The restrictions on single plane service betweeen Atlanta, Tampa, and Miami,[2] on the one hand, and TWA's western cities,[3] on the other, no longer serve a useful purpose and have hampered the economic development of TWA's service to its southeastern cities. Its previous requests for relief from these restrictions have been denied by the Board, and, at the same time, new competitive awards to other carriers have eroded TWA's ability to mount successful services in these markets. TWA does not specify the improved service it will provide if its restrictions are removed, but does state that "* * * the traveling public will also benefit from the added single-plane opportunities TWA would receive." [4]

[1] Specifically, TWA requests that the Board delete from its certificate for Route 2 the following conditions (in pertinent part): "(29) The holder shall not engage in single plane air transportation between points on segment 6, other than St. Louis, Mo., on the one hand, and any point west of Kansas City, Mo., on the other hand, except between Atlanta, Ga., and Wichita, Kans., via segment 8: Provided * * *" "(32) The holder shall not provide single-plane service between Denver, Colo., on the one hand, and Atlanta, Ga., Miami, Fort Lauderdale, or Tampa-St. Petersburg-Clearwater, Fla., on the other hand."

[2] Tampa includes the hyphenated point Tampa-St. Pertersburg-Clearwater; Miami includes the hyphenated point, Miami-Fort Lauderdale. The abbreviated references will be used throughout this order.

[3] The cities on TWA's certificate west of Kansas City to which it seeks improved authority are Albuquerque, Amarillo, Denver, Las Vegas, Los Angeles-Ontario, Oklahoma City, Phoenix, San Francisco-San Jose-Oakland, Tucson, Tulsa, and Wichita. These cities will be referred to collectively as the western cities.

[4] TWA petition at 20.

A number of persons have filed in response to the TWA petition. The following civic representatives support it: the City of Albuquerque and the Albuquerque Chamber of Commerce, the City of Amarillo and the Amarillo Chamber of Commerce, the City of Atlanta and the Atlanta Chamber of Commerce, Dade County and the Greater Miami Traffic Association, Las Vegas Parties (Clark County, Nevada, the Greater Las Vegas Chamber of Commerce, the City of Las Vegas, the Nevada Resort Association and the Las Vegas Convention/Visitors Authority), the Oklahoma City Parties (the city of Oklahoma City and the Oklahoma City Chamber of Commerce), the City of Phoenix, the City of St. Louis and the St. Louis Airport Authority, the St. Louis Regional Commerce and Growth Association, the Tampa Bay Area Parties (the Counties of Hillsborough and Pinellas, the City of Tampa, and the Greater Tampa Chamber of Commerce), the Tucson Airport Authority, and the City of Wichita and the Wichita Greater Chamber of Commerce.

Seven carriers have responded to the TWA petition; all of them oppose it. American Airlines asserts that the requested relief will have substantial competitive implications and that the application raises controversial and complex questions which are inappropriate for processing by show-cause procedures. Braniff Airways urges that TWA's request be considered with its realignment application in docket 30909. Braniff further argues that, with respect to certain markets, the TWA application should be denied outright, since the issue of improved authority in these markets is to be considered in pending Board proceedings. Continental Air Lines argues that TWA's application raises significant issues of material fact which can be addressed only in an oral evidentiary hearing. Delta Air Lines argues that TWA's application should be considered with the TWA realignment application, or, alternatively, that it should be denied outright since the Board has recently awarded new authority in several of these markets and TWA should not be allowed to dilute the traffic which will be available to support these newly authorized services. Frontier Airlines opposes TWA's request only insofar as it seeks improved Atlanta-St. Louis-Wichita authority. National Airlines states that removal of TWA's restrictions will affect the competitive balance in markets which in the aggregate generate over 1.5 million passengers. National also argues that the TWA application raises issues which can be resolved only in a full hearing. Western Airlines raises similar objections.

Subsequently, on January 19, 1978, TWA filed a motion for immediate action on its petition for an order to show cause. TWA attached several appendices to its motion which describe the schedule changes it intends to introduce if its restrictions are removed. The Las Vegas Parties, the St. Louis Parties and the Tampa Bay Area Parties support the TWA motion. Four air carriers, American, Braniff, Continental, and Delta, filed in opposition to it. Delta also states that it has a similar restriction and asks that its modification be considered in any investigation concerning the removal of TWA's restriction.

TWA also filed a contingent motion to consolidate its application for removal of conditions 29 and 32 in docket 31371 with the "Houston-Tampa/Orlando Investigation" in Docket 31921. The Board has denied this motion. See Order 78-3-113.

We have decided to defer action on TWA's petition for an order to show cause and to deny its motion for immediate action. TWA has submitted a complex proposal which includes thirty-three markets and which substantially duplicates a portion of its application for route realignment in Docket 30909.[5] As we noted in Order 78-3-42, March 9, 1978:

> Absent overriding considerations we will not process restriction removal applications out of turn if the authority requested is entirely or substantially duplicated in a pending route realignment.

We have been increasingly willing to expand the use of show cause procedures to process applications for restriction removal.[6] We have also, on occasion, considered individual requests for route authority even when they properly fell within the scope of pending realignment applications.[7] We have repeated, however, that these occasions represent exceptions to our general policy of hearing route realignment applications, and substantially similar requests for restriction removal, in the chronological order in which the realignment applications are filed.[8] No sufficient reasons for departing from that general policy are present here. Therefore, we will defer consideration of this TWA application and consider it with the carrier's request for realignment in Docket 30909.[9]

[5] Under the realignment guidelines set forth in Appendix C to Order 76-5-101, May 21, 1976, TWA would receive less liberal authority in some markets, and more liberal authority in others, than the relief it requests here.

[6] Western Route Realignment, Order 77-11-74, November 17, 1977.

[7] See e.g., Application of Ozark Air Lines, Inc., Order 77-3-175, Mar. 31, 1977.

[8] The reasons in support of this policy, and our departures from it, are recited in Order 78-3-42, Mar. 9, 1978, Application of Piedmont Aviation, Inc., at pp. 3-4.

[9] The Board has taken identical action on an application and motion filed by Northwest Airlines, Order 77-9-25, Sept. 8, 1977.

Accordingly, it is ordered, That:

1. Action be deferred on the petition for an order to show cause of Trans World Airlines in Docket 31371, until further order of the Board; and

2. The motion for immediate action of Trans World Airlines in Docket 31371 be denied.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[10]
Secretary.

[FR Doc. 78-9141 Filed 4-5-78; 8:45 am]

[3510-25]

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 128]

PHILADELPHIA PORT CORP.

Resolution and Order Approving Application for a Foreign-Trade Zone in Philadelphia, Pa.

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

RESOLUTION AND ORDER

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Philadelphia Port Corp., Philadelphia, Pa., filed with the Foreign-Trade Zones Board (the Board) on August 26, 1977, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at three sites on the Delaware River waterfront within the City of Philadelphia and the Philadelphia Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal includes open land on which the Grantee might desire to permit construction of buildings by third parties, this approval includes authority to the Grantee to permit the erection of such buildings, pursuant to section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the Grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

[10] All members concurred.

GRANT TO ESTABLISH, OPERATE, AND MAINTAIN A FOREIGN-TRADE ZONE IN PHILADELPHIA, PA.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Philadelphia Port Corp. (Grantee) has made application (filed August 26, 1977) in due and proper form to the Board requesting the establishment, operation, and maintenance of a general-purpose foreign-trade zone consisting of three sites in Philadelphia, Pa., within the Philadelphia Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's Regulations (15 CFR, part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a general-purpose foreign-trade zone, designated on the records of the Board as Zone No. 35, at the site locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, said grant being subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the zone sites shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C., this 24th day of March 1978, pursuant to Order of the Board.

Foreign-Trade Zones Board.

JUANITA M. KREPS,
Chairman and Executive Officer.

Attest:
JOHN J. DAPONTE,
Executive Secretary.

[FR Doc. 78-9042 Filed 4-5-78; 8:45 am]

[3510-22]

National Oceanic and Atmospheric Administration

MYSTIC MARINELIFE AQUARIUM

Issuance of Permit To Take Northern Fur Seals

On February 2, 1978, notice was published in the FEDERAL REGISTER (43 FR 4450), that an application had been filed with the National Marine Fisheries Service by Mystic Marinelife Aquarium, Mystic, Conn. 06355, for a permit to take ten (10) northern fur seals (*Callorhinus ursinus*), for the purpose of public display.

Notice is hereby given that on March 28, 1978, and as authorized by the provisions of the Fur Seal Act of 1966 (16 U.S.C. 1151-1187), the National Marine Fisheries Service issued a permit for the above taking to Mystic Marinelife Aquarium subject to certain conditions set forth therein. The permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;
Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Mass. 01930;
Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue North, Seattle, Wash. 98109; and
Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

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

MARCH 28, 1978.

[FR Doc. 78-9066 Filed 4-5-78; 8:45

[3510-12]

POTENTIAL MARINE SANCTUARIES OFFSHORE OF CALIFORNIA

Public Workshop

The Office of Ocean Management of the National Oceanic and Atmospheric Administration and California Coastal Commission will sponsor a public meeting as follows.

Date: April 21, 178.
Place: Howard Johnson's, 160 Shoreline Highway, Mill Valley, Calif. 94941, 415-332-5700, the Conference Room.
Time: 1 p.m. to 4 p.m.
Purpose of meeting: To explain the marine sancturary program and how it will apply in California. Emphasis will be on the offshore area of Point Reyes.

Views are solicited on a number of issues, including but not limited to: The marine resources which may need protection, development planned or ongoing within the area; the purpose of designation; the character of necessary regulations, appropriate boundaries; the type of management needed, and the level of necessary enforcement.

All comments and inquiries should be addressed to Commander Phillip C. Johnson, Associate Director, Project Management, Office of Ocean Management, National Oceanic and Atmospheric Administration, 2001 Wisconsin NW., Washington, D.C. 20235, 202-254-7512, or Ms. Carol Pillsbury, Marine Resources Coordinator, California Coastal Commisison, 631 Howard Street, San Francisco, Calif. 94105, 415-543-8555.

R. L. CARNAHAN
Deputy Assistant
Administrator for Administration.

[FR Doc. 78-9067 Filed 4-5-78; 8:45 am]

[3510-12]

POTENTIAL MARINE SANCTUARIES OFFSHORE OF CALIFORNIA

Public Workshop

The Office of Ocean Management of the National Oceanic and Atmospheric Administration and the California Coastal Commission will sponsor a public meeting as follows:

Date: April 20, 1978.
Place: Ramada Inn, 1425 Munras Avenue, Monterey, Calif. 93940, 408-649-1020, the Iron Horse Room.
Time: 1 p.m. to 4 p.m.
Purpose of meeting: To explain the marine sanctuary program and how it will apply in California. Emphasis will be on the offshore area of Monterey.

Views are solicited on a number of issues, including but not limited to:

The marine resources which may need protection, development planned or ongoing within the area; the purpose of designation; the character of necessary regulations, appropriate boundaries; the type of management needed, and the level of necessary enforcement.

All comments and inquiries should be addressed to Commander Phillip C. Johnson, Associate Director, Project Management, Office of Ocean Management, National Oceanic and Atmospheric Administration, 2001 Wisconsin Avenue NW., Washington, D.C. 20235, 202-254-7512, or Ms. Carol Pillsbury, Marine Resources Coordinator, California Coastal Commission, 631 Howard Street, San Francisco, Calif. 94105, 415-543-8555.

R. L. CARNAHAN,
Deputy Assistant Administrator for Administration.

[FR Doc. 78-9068 Filed 4-5-78; 8:45 am]

[3510-12]

POTENTIAL MARINE SANCTUARIES OFFSHORE OF CALIFORNIA

Public Workshop

The Office of Ocean Management of the National Oceanic and Atmospheric Administration and the California Coastal Commission will sponsor a public meeting as follow:

Date: April 18, 1978.
Place: Bahia Hotel, 998 West Mission Drive, San Diego, Calif. 92109, 714-488-0551, the Del Mar Room.
Time: 1 p.m. to 4 p.m.
Purpose of meeting: To explain the marine sanctuary program and how it will apply in California. Emphasis will be on the offshore area of San Diego.

Views are solicited on a number of issues, including but not limited to: The marine resources which may need protection, development planned or ongoing within the area; the purpose of designation; the character of necessary regulations, appropriate boundaries; the type of management needed, and the level of necessary enforcement.

All comments and inquiries should be addressed to Commander Phillip C. Johnson, Associate Director, Project Management, Office of Ocean Management, National Oceanic and Atmospheric Administration, 2001 Wisconsin Avenue NW., Washington, D.C. 20235, 202-254-7512, or Ms. Carol Pillsbury, Marine Resources Coordinator, California Coastal Commission, 631 Howard Street, San Francisco, Calif. 94105, 415-543-8555.

R. L. CARNAHAN,
Deputy Assistant Administrator for Administrator.

[FR Doc. 78-9069 Filed 4-5-78; 8:45 am]

[3510-12]

POTENTIAL MARINE SANCTUARIES OFFSHORE OF CALIFORNIA

Public Workshop

The Office of Ocean Management of the National Oceanic and Atmospheric Administration and the California Coastal Commission will sponsor a public meeting as follows:

DATE: April 19, 1978.

PLACE: Santa Barbara Inn, 435 South Milpas, Santa Barbara, Calif. 93103, 805-966-2285, The Cloud Room.

TIME: 1 p.m. to 4 p.m.

PURPOSE OF MEETING: To explain the marine sanctuary program and how it will apply in California. Emphasis will be on the offshore area of Santa Barbara.

Views are solicited on a number of issues, including but not limited to: The marine resources which may need protection, development planned or ongoing within the area; the purpose of designation; the character of necessary regulations, appropriate boundaries; the type of management needed, and the level of necessary enforcement.

All comments and inquiries should be addressed to Commander Phillip C. Johnson, Associate Director, Project Management, Office of Ocean Management, National Oceanic and Atmospheric Administration, 2001 Wisconsin Avenue NW., Washington, D.C. 20235, 202-254-7512 or Ms. Carol Pillsbury, Marine Resources Coordinator, California Coastal Commission, 631 Howard Street, San Francisco, Calif. 94105, 415-543-8555.

R. L. CARNAHAN,
Deputy Assistant Administrator for Administration.

[FR Doc. 78-9070 Filed 4-5-78; 8:45 am]

[3510-25]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

BILATERAL TEXTILE NEGOTIATIONS WITH THE GOVERNMENTS OF COLOMBIA, HAITI, MEXICO, THE PHILLIPPINES, AND THAILAND

Soliciting Public Comment

APRIL 3, 1978.

On April 21, 1974, the Committee for the Implementation of Textile Agreements published a notice in the FEDERAL REGISTER (39 FR 13307) conveying the Committee's intention to announce, and solicit comment on, U.S. Government actions implementing the GATT Arrangement Regarding International Trade in Textiles.

Pursuant to the terms of the arrangement and certain bilateral textile agreements entered into thereunder, the Committee anticipates holding negotiations with the Governments of Colombia, Haiti, Mexico, the Phillippines, and Thailand before the end of 1978. Any party wishing to express a view or provide data or information with regard to the treatment of any product under the bilateral textile agreements and any other aspects thereof, or comment on production or availability of domestic textile products, is invited to submit such in 10 copies to Mr. Robert E. Shepherd, Chairman of the Committee for the Implementation of Textile Agreements and Deputy Assistant Secretary for Domestic Business Development, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 2836, Washington, D.C. 20230. Inasmuch as the exact timing of the negotiations is not yet certain, it would be appreciated if comments were submitted promptly.

Views, data, or information submitted under this procedure will be available for public inspection in the Office of Textiles, Room 2815, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, and may be obtained upon written request. Whenever practicable, public comment may be invited concerning views, comments, or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments on any negotiation, consultation, market disruption or any other matter pursuant to this notice is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) and 554(a)(4) relating to matters which constitute "a foreign affairs function of the United States."

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 78-9124 Filed 4-5-78; 8:45 am]

[6315-01]

COMMUNITY SERVICES ADMINISTRATION

EMERGENCY ENERGY ASSISTANCE PROGRAM

Funding Declarations

The Director of the Community Serv- ices Administration (CSA) has found, based on criteria indicated in column[1] (5) of appendix A that energy-related emergencies have existed since the dates indicated in column (3).

Therefore, eligible grantees who cover those areas indicated in column (2) will proceed as follows:

[1] All references to "column" refer to appendix A to this notice.

Grantees who receive funds by letter of credit may withdraw and expend funds in the amount approved in column (4) or that portion of that amount which have been granted to them under program account 80, emergency energy assistance program, or grantees who normally receive checks are being informed that their checks are being forwarded by the Treasury Department for the total amount of the EEAP grant. However, these grantees immediately may begin obligating funds against this grant in the amount appropriated in column (4) and from the date indicated in column (3).

Column (3) contains the earliest date to our knowledge which provided the basis for a finding by the Director of CSA that an energy-related emergency existed. However, any eligible grantee within those areas covered in column (2) may submit evidence to support the existence of energy-related emergencies which existed between December 31, 1977, and the date given in column (3) for a finding by the Director of CSA. (See CSA notice 6143-7, section 4 or § 1061.51-3 in the FEDERAL REGISTER (43 FR 9476)).

Request for supplemental (additional) funds shall be made in accordance with the provisions of section 11.c. of CSA notice 6143-7.

FRANK N. JONES,
Acting Director.

APPENDIX A

State(s) declared	Areas covered	Emergency declaration date	Approved allocation for area covered	Basis for determination*
(1)	(2)	(3)	(4)	(5)
REGION II				
New York	Counties of:			
	Ulster	Feb. 6, 1978	$57,717	4.b.(2)(a).
	Tioga	Jan. 1, 1978	65,018	4.b.(2)(a).
REGION IV				
Alabama	Entire State	Mar. 6, 1978	595,000	4.b.(1).
REGION VI				
Arkansas	...do	Jan. 7, 1978	495,000	4.b.(1) and 4.b.(2)(a).
Oklahoma	...do	Jan. 1, 1978	545,000	4.b.(2)(a).
New Mexico	Sandoval County	Mar. 21, 1978	37,460	4.b.(2)(a).
REGION VII				
Iowa	Entire State	Feb. 1, 1978	1,075,000	4.b.(2)(a).

* Reference CSA Notice 6143-7, sec. 4; FEDERAL REGISTER 1061.51-3(b).

[FR Doc. 78-9097 Filed 4-5-78; 8:45 am]

[3810-71]

DEPARTMENT OF DEFENSE

Department of the Navy

CHIEF OF NAVAL OPERATIONS EXECUTIVE PANEL ADVISORY COMMITTEE

Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Technology Subpanel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on April 27-28, 1978, at the Naval Ocean Systems Center, San Diego, Calif. Sessions of the meeting will commence at 8:30 a.m. and terminate at 5:30 p.m. on both days. All sessions will be closed to the public.

The agenda will consist of matters required by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order, including discussions of U.S. ocean surveillance capabilities, advanced command and control architecture, bioscience, and antisubmarine warfare programs. Accordingly, the Secretary of the Navy had determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Commander William A. Armbruster, U.S. Navy, Executive Secretary of the CNO Executive Panel Advisory Committee, 1401 Wilson Boulevard, Room 405, Arlington, Va. 22209, phone OX 4-3191.

Dated: April 3, 1978.

K. D. LAWRENCE,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 78-9090 Filed 4-5-78; 8:45 am]

[3810-71]

CONTINUED UTILIZATION OF KAHOOLAWE ISLAND, HAWAII, FOR WEAPONS TRAINING BY THE U.S. ARMED FORCES

Public Hearing and Availability of the Draft Supplement to the 1972 Final Environmental Impact Statement (EIS)

Notice is hereby given pursuant to the National Environmental Policy Act of 1969, Pub. L. 91-190 (42 U.S.C. 4321 et seq.), and the Council on Environmental Quality Guidelines, 40 CFR Part 1500, that a public hearing will be held for the purpose of providing the public with relevant information on the proposed action to continue the military use of Kahoolawe Island, Hawaii, and to afford the public an opportunity to present their views on this matter. The hearing will be held on April 25, 1978, at the Kaunakakai School in Kaunakakai, Molokai, Hawaii. The afternoon session will begin at 4 p.m. and the evening session will begin at 7 p.m.

This hearing is being held in order that all persons, governmental organizations, agencies, and groups who so desire are afforded the opportunity to comment on the proposed action.

The hearing will be conducted by Captain Peter B. Walker, Judge Advocate General's Corps, U.S. Navy, and will include a presentation of the Navy's utilization of Kahoolawe Island, expected environmental impact, alternatives, and what may be expected for the future.

The following procedures will be followed during this public hearing. For record purposes, all persons attending the hearing will be asked to provide their names upon entering the hearing. Individual speakers wishing to comment at the hearing will have 4 minutes each, and group spokespersons will have 6 minutes each to summarize and present their views. Each speaker will identify himself and any organization he may be representing. One speaker may not relinquish time to another.

Individuals and organizations wishing to submit written statements to be included in the hearing record are encouraged to do so by April 14, 1978, or such statements may be presented to the hearing officer during the hearing. Preregistration of speakers is desired, and should be made in person or writing. Speakers may also register at the attendance desk at the hearing. The name and title of the speaker for organizations should be included in the preregistration.

Any organization desiring to make a formal presentation in excess of the foregoing time limits is requested to contact the hearing officer prior to April 14, 1978, so that appropriate arrangements may be made. The closing date for including additional written statements in the Navy hearing record is May 5, 1978. Speaker preregistration and submission of written statements should be addressed to:

Captain P. B. Walker, JAGC, U.S. Navy, c/o Code 00F, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii 96860.

This draft supplement updates the final EIS of 1972 in format and content to meet the requirements of the National Environmental Policy Act of 1969 and includes the current ongoing training operations by the several military service branches on the island. It updates the alternatives to military use of this island target complex and of military alternatives to Kahoolawe. Tree planting, erosion control, goat eradication, ordnance removal, and archeological/historic sites investigations are included.

Anticipated environmental impacts resulting from the proposed project are documented in the 1972 final environmental impact statement for Kahoolawe Island (FEIS) and in the draft supplement thereto which is the subject of the hearing here announced. Copies of the draft supplement, together with the FEIS, have been widely distributed and are available to the public at the following locations:

Chief of Naval Information, the Pentagon Press Room, Washington, D.C. 20350.
Headquarters, Commander, Pacific Division, Naval Facilities Engineering Command, Makalapa, Pearl Harbor, Hawaii.
Office of the Mayor, County of Maui, 1588 Kaahumanu Avenue, Wailuku, Maui, Hawaii.
Office of the Mayor, City of Honolulu, City Hall, Honolulu, Hawaii.
Office of the Mayor, 4396 Rice Street, Lihue, Kauai, Hawaii.
Office of the Mayor, City Hall, County of Hawaii, Hilo, Hawaii.
All public libraries in the State of Hawaii, including Bookmobiles.
University of Hawaii Hamilton and Sinclair Libraries, Honolulu, Hawaii.
Ewa Beach Satellite City Hall, 91923 Fort Weaver Road, Ewa Beach, Hawaii.
Hauula Satellite City Hall, Hauula, Hawaii.
Hawaii Kai Satellite City Hall, Koko Marina Shopping Center, Honolulu, Hawaii.
Kailua Satellite City Hall, 302 Kuulet Road, Kailua, Hawaii.
Kalihi-Palama Satellite City Hall, 1865 KAM IV Road, Honolulu, Hawaii.
Kaneohe Satellite City Hall, 46-024 KAM Highway, Kaneohe, Hawaii.
Wahiawa Satellite City Hall, 830 California Avenue, Wahiawa, Hawaii.
Waianae Satellite City Hall, 85-670 Farrington Highway, Waianae, Hawaii.
Waipahu Satellite City Hall, 94-300 Farrington Highway, Waipahu, Hawaii.

For further information concerning this notice, contact Captain P. B. Walker, JAGC, U.S. Navy, c/o Code 09F, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii 96860, telephone No. 808-471-0708.

This notice supplements the previous notice of public hearings on the draft supplement to the 1972 final environmental impact statement on Kahoolawe Island, Hawaii, FR Doc. 78-6997, appearing at pages 10969-10970 in the issue for Thursday, March 16, 1978, as amended by FR Doc. 78-7966, appearing at page 12747 in the issue for Monday, March 27, 1978.

Dated: April 3, 1978.

K. D. LAWRENCE,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 78-9091 Filed 4-5-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

Energy Information Administration

SURVEY OF OIL AND GAS WELL OPERATORS TO OBTAIN ESTIMATES OF U.S. CRUDE OIL AND NATURAL GAS RESERVES, PRODUCTION AND RELATED DATA

Public Hearing; Extension of Period for Submission of Written Comments

AGENCY: Department of Energy, Energy Information Administration.

ACTION: Notice of public hearing.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy hereby gives notice of a public meeting for discussion of the Oil and Gas Reserves, Production and Related Data Form EIA-23, published in the FEDERAL REGISTER February 17, 1978 (43 FR 6993). Speakers are specifically invited to comment on the issues presented in the FEDERAL REGISTER notice of February 17, 1978, concerning the composition of the Form EIA—23 and other pertinent issues. Additionally, the date for submission of written comments, originally set for March 10, 1978, and subsequently extended to April 19, 1978, is further extended to May 8, 1978.

DATES: Requests to speak must be made by April 24, 1978. Written comments must be submitted by May 8, 1978. The hearing will be held May 8, 1978, commencing at 9:30 a.m. at the location specified in the "address" section of this notice, and will be continued on May 9, 1978, if necessary.

ADDRESSES: Comments and requests to speak to: Department of Energy, Public Hearing Management, Room 2313, 2000 M Street, Box SQ, Washington, D.C. 20461; hearing location: Room 2105, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), 2000 M Street NW., Room 2222, Washington, D.C. 20461, 202-254-5201, or

William L. Monroe, Department of Energy, 825 North Capitol Street, Room 7312A, Washington, D.C. 20406, 202-275-4357, or if no answer, 202-275-4370.

SUPPLEMENTARY INFORMATION: I. Comment procedures: A. Written comments; B. Public hearing: 1. Requesting opportunity to make oral statement. 2. Conduct of the hearing.

I. COMMENT PROCEDURES

A. WRITTEN COMMENTS

You are invited to submit written views, data, or arguments with respect to the composition of Form EIA—23 by the close of business on May 8, 1978. Comments should be submitted to the address indicated in the "addresses" section of this notice and should be identified on the outside envelope with the designation "Comments to Form EIA—23." Fifteen copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

B. PUBLIC HEARING

1. *Requesting opportunity to make oral statement.* The time and place for the hearing are indicated in the "dates" and "addresses" sections of this notice.

You must make a written request for an opportunity to make an oral presentation at the hearing. You should be prepared to describe the interest concerned; if appropriate, to state why you are a proper representative of a group or class of persons that has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m., e.s.t., April 27, 1978, and must submit 100 copies of your statement to Public Hearing Management, Room 2313, 2000 M Street NW., Washington, D.C., before 4:30 p.m., e.d.t., on May 5, 1978.

2. *Conduct of the hearing.* We reserve the right to select the persons to be heard at this hearing, to schedule

their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An EIA official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing to Public Hearing Management before 4:30 p.m., e.d.t., May 1, 1978. You may also submit any questions, in writing, to the presiding officer at the time of the hearing, the presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained and made available for inspection at the DOE Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C., on March 31, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration.

[FR Doc. 78-9096 Filed 4-5-78; 8:45 am]

[6740-02]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CS73-380, etc.]

APPLICATIONS FOR "SMALL PRODUCER" CERTIFICATES [1]

MARCH 27, 1978.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 24, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal 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 held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No.	Date filed	Applicant
CS73-380 [1]...	11/11/77	Watson Petroleums Exploration, Ltd., 2500 First City National Bank Bldg., Houston, Tex. 77002.
CS77-167.....	3/20/78	Susan H. Hillstrom, [2] 999 Green Street, Apartment No. 2603, San Francisco, Calif. 94133.
CS77-364 [3]...	3/20/78	George J. Ablah, d.b.a. Little George Oil Co. and Magnum Land Corp., 680 Fourth Financial Center, Wichita, Kans. 67202.
CS78-290.....	3/3/78	Funk Petroleum, Inc., 3180 Liberty Tower, Oklahoma City, Okla. 73102.
CS78-292.....	3/6/78	Gerald E. Harrington, P.O. Box 4026, Station A, Albuquerque, N. Mex. 87106.
CS78-293.....	3/6/78	F. Eugene Harrington, P.O. Box 4026, Station A, Albuquerque, N. Mex. 87106.
CS78-294.....	3/6/78	Mary Jone Chappell, P.O. Box 4026, Station A, Albuquerque, N. Mex. 87106.
CS78-295.....	3/6/78	James V. Harrington, P.O. Box 4026, Station A, Albuquerque, N. Mex. 87106.
CS78-296.....	3/6/78	On Coast Petroleum Co., 1200 Hanna Building, Cleveland, Ohio 44115.
CS78-297.....	3/6/78	W. E. Kirkpatrick and Stephen S. Stotts, 1309 Cookson, Ponca City, Okla. 74601.
CS78-298.....	3/7/78	M. C. McClure, Box 310, El Dorado, Kans. 67042.
CS78-299.....	3/9/78	Thomas J. Wintermute (Winco Oil & Gas), 1116 The 600 Bldg., 600 Leopard St., Corpus Christi, Tex. 78473.
CS78-300.....	3/9/78	Thomas R. Cambridge and A. L. Nail, d.b.a. Cambridge & Nail, 803 Bank of the Southwest Bldg., Amarillo, Tex. 79109.
CS78-301.....	3/9/78	Leroy W. James, Route 1, Box 13-B, Dodson, La. 71442.
CS78-302.....	3/9/78	Chandler Development, Inc., 1401 Denver Club Bldg., 518 17th Street, Denver, Colo. 80202.
CS78-303.....	3/13/78	Stanley W. and Ryan Y. Cunningham Trusts No. 1, 5th Floor, 100 Park Avenue Bldg., Oklahoma City, Okla.73102.
CS78-304.....	3/13/78	Eugene Saber, M.D., 2715 Basil Lane, Los Angeles, Calif.
CS78-305.....	3/13/78	Perry Oil Co., 5400 North Brookline, Suite No. 307, Oklahoma City, Okla. 73112
CS78-306.....	3/13/78	Wayne A. Piette, P.O. Box 2156, Midland, Tex. 79702.
CS78-307.....	3/13/78	The Rings of Saturn, Inc., 1703 East Skelly Drive, Tulsa, Okla. 74105.
CS78-308.....	3/13/78	The Newhall Land & Farming Co., 23823 Valencia Blvd., Valencia, Calif. 91355.
CS78-309.....	3/13/78	ASA Energy Corp., P.O. Box 640, Duncan, Okla. 73533.
CS78-310.....	3/14/78	John M. Davis, Trustee, P.O. Box 366, Stephens, Ark. 71764.
CS78-311.....	3/14/78	Carolina Exploration Corp., P.O. Box 6317, Columbia, S.C. 29260.
CS78-312.....	3/14/78	Trust for Nancy Rodman Anguish under the will of E. G. Rodman, Jr., Thomas E. Rodman, and W. D. Noel, Trustees, 1701 Pennsylvania Avenue NW., Washington, D.C. 20006.
CS78-313.....	3/14/78	Earl G. Rodman, Jr., 1701 Pennsylvania Avenue NW., Washington, D.C. 20006.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS78-314.....	3/14/78	Thomas E. Rodman, 1701 Pennsylvania Avenue NW., Washington, D.C. 20006.
CS78-315.....	3/14/78	Mrs. E. G. Rodman, 1701 Pennsylvania Ave. NW., Washington, D.C. 20006.
CS78-316.....	3/14/78	Rocket Oil Co., P.O. Box 640, Duncan, Okla. 73533.
CS78-317.....	3/16/78	Towalt Oil & Gas Co., 6000 West 9th, Amarillo, Tex. 79106.
CS78-318.....	3/17/78	Vaquero Petroleum, Inc., 1640 Capital National Bank, Houston, Tex. 77002.
CS78-319.....	3/17/78	New Mexico Energy Corp., 800 Franz Huning SW., Albuquerque, N. Mex. 87104.
CS78-320.....	3/20/78	Saga Petroleum U.S., Inc., 2000 West Loop South, Suite 1650, Houston, Tex. 77027.
CS78-321.....	3/20/78	B. B. Orr, P.O. Box 1608, Longview, Tex. 75601.
CS78-322.....	3/20/78	William M. Plaster, 800 Johnson Bldg., Shreveport, La. 71101.
CS78-323.....	3/20/78	William E. Richardson, 1101 Petroleum Club Bldg., Tulsa, Okla. 74119.
CS78-324.....	3/20/78	Ivan Wilder, P.O. Box 97, Gallatin, Mo. 64640.
CS78-325.....	3/20/78	Brandt Oil Co., 1103 Douglas Bldg., Wichita, Kans. 67202.
CS78-326.....	3/20/78	Panhandle Cooperative Royalty Co.,[3] 402 Cravens Bldg., Oklahoma City, Okla. 73102.
CS78-327.....	3/20/78	Cherokee Resources, Inc., 432 Mayo bldg., Tulsa, Okla. 74103.
CS78-328.....	3/20/78	R. O. Williams, P.O. Box 3012, Midland, Tex. 79702.

[1]Being noticed to reflect waiver of Sec. § 157.40(b)(2).
[2]Being noticed to reflect name and address change, as evidenced by letter dated Mar. 14, 1978.
[3]Being noticed to include Magnum Land Corp.

[FR Doc. 78-8898 Filed 4-5-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 877-6]

COLORADO DRINKING WATER PROGRAM

Determination of Primary Enforcement Responsibility

In accordance with the provisions of section 1413 of the Safe Drinking Water Act of 1974 (SDWA), (88 Stat. 1661; 42 U.S.C. 300f et seq.) and 40 CFR 142 (41 FR 2918, January 20, 1976), Dr. Anthony W. Robbins, Executive Director of the Colorado State Department of Health, has submitted an application for assumption of primary enforcement responsibility under the SDWA to the Environmental Protection Agency (EPA) for approval.

Notice is hereby given that the Regional Administrator of EPA Region VIII has approved this application for primary enforcement authority, to become effective on April 21, 1978. This action was based upon a thorough evaluation of Colorado's water supply supervision program in relation to the requirements of 40 CFR 142.10. Specifically, the State has adopted and implemented:

1. Primary drinking water regulations which are as stringent as the National Interim Primary Drinking Water Regulations;
2. An inventory of public drinking water systems;
3. A systematic program for conducting sanitary surveys of public drinking water systems;
4. A State program for certification of laboratories performing analyses of drinking water samples;
5. State laboratory procedures, approved by EPA, for drinking water analyses;
6. A plan and construction review program;
7. Statutory and regulatory enforcement authority and procedures;
8. Requirements for suppliers of drinking water to keep appropriate records and make appropriate reports to the State;
9. Requirements for suppliers of drinking water to give public notice for violation of State drinking water regulations;
10. A system for required State recordkeeping and reporting;
11. A program for issuing variances and exemptions; and
12. A plan for providing safe drinking water under emergency circumstances.

On or before April 21, 1978, any person may request a public hearing to consider the Regional Administrator's determination. If a public hearing is requested and granted, this determination will not become effective until such time, following the hearing, as the Regional Administrator issues an order affirming or rescinding the determination.

Requests for a public hearing shall be addressed to:

Alan Merson, Regional Administrator, U.S. Environmental Protection Agency, 1860 Lincoln Street, Denver, Colo. 80295.

and shall include the following information:

1. The name, address, and telephone number of the individual, organization, or other entity requesting a hearing;
2. A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting individual intends to submit at such hearing; and,
3. The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

A complete copy of Colorado's application for primary enforcement responsibility is available for public inspection, during normal business hours, at the Office of the EPA Regional Administrator, and at the following location in Colorado:

Colorado State Department of Health, 4210 East 11th Avenue, Denver, Colo.

Dated: March 31, 1978.

ALAN MERSON,
Regional Administrator.

[FR Doc. 78-9032 Filed 4-5-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Revoked

Notice of voluntary revocation is hereby given with respect to Certificates of Financial Responsibility (Oil Pollution) which had been issued by the Federal Maritime Commission, covering the below indicated vessels, pursuant to part 542 of title 46 CFR and section 311(p)(1) of the Federal Water Pollution Control Act, amended.

Certificate No.	*Owner/operator and vessels*
01014.....	Robert Bornhofen Reederei: *Elisabeth Bornhofen.*
01151.....	Overseas Tankship Corp.: *Chevron Frankfurt.*
01232.....	Rolf Wigands Rederi A/S: *Borwi.*
01306.....	Shaw Savill & Albion Co. Ltd.: *Illyric, Icenic.*
01428.....	Ocean Transport & Trading Ltd.: *Fourah Bay, Dumurra, Donga, Dumbaia.*
01489.....	Aliakmon Shipping Co. Ltd.: *Aliakmon.*
01546.....	Belgean Fruit Lines S.A.: *Frubel Prinses Paola.*
01574.....	Fearnley & Eger: *Ferngrove, Fernspring.*
01578.....	Harald Jacobsen Shipping A/S: *Janneland.*
01758.....	Chotin Transportation Inc.: *NMS 1802, Chotin 1643X, Chotin 991X.*
01805.....	Suisse Atlantique: *St. Cergue.*
01890.....	A/S Billabong: *Star Cariboo.*
01893.....	Silver Line Ltd.: *Silverdon.*
01899.....	Mountain Navigation Co., Inc.: *Cape Palmas.*
01910.....	Deutsche Dampfschifffahrtsgesellschaft Hansa: *Argenfels, Wasserfels.*
01981.....	AB Svenska Venska Orient Linien: *Sunnanland, Tyrusland, Vidaland, Vikingland.*
02138.....	Sioux City & New Orleans Barge Lines, Inc.: *SCNO-1308, SCNO-1307, SCNO-1306, SCNO-1305, SCNO-1304, SCNO-1303, SCNO-1302, SCNO-1301, SCNO-1251, SCNO-1250, SCNO-1204, SCNO-1203, SCNO-1202, SCNO-1326, SCNO-1314, SCNO-1313, SCNO-1312, SCNO-1311, SCNO-1310, SCNO-1309, SCNO-1315, SCNO-1316, SCNO-1317, SCNO-1318, SCNO-1319, SCNO-1320, SCNO-1321, SCNO-1322, SCNO-1323, SCNO-1324, SCNO-1325, SCNO-1327B, SCNO-1601, SCNO-1602, SCNO-1603, Omaha, Nebraska City, Sioux City, Walter Stephens Cox, Robert Crown, SCNO-1201.*

Certificate No.	Owner/operator and vessels
02194	Compagnie General Maritime: *Si Kiang, Moroni.*
02198	Peninsular & Oriental Steam Navigation Co.: *Strathtay, Strathtruim.*
02199	Bugsier, Reederei-Und Bergungs-Aktiengeselischaft: *Elbeland.*
02218	Christian Haaland: *Northland.*
02241	Cape Continent Shipping Co. (Proprietary) Ltd.: *Tanga.*
02429	G&C Towing, Inc.: *Chippewa.*
02492	Interstate & Ocean Transport Co.: *Interstate No. 12.*
02551	Ellerman Lines Ltd.: *City of Ottawa, City of Corinth, City of Auckland.*
02601	Caraibische Scheepvaart Maatschappij N. V.: *Calamares.*
02610	Peter Dohle Schiffahrts-KG: *Carolina.*
02697	Hellenic Shipping & Industries Co. Ltd. S.A.: *Mikton.*
02961	Kobe Kisen Kabushiki Kaisha: *Showa Maru, Atlantic Maru, Muneshima Maru.*
02980	Rederi A/S Mimer and A/S Norfart: *Anette.*
03055	Upper Lakes Shipping Ltd.: *Prosphore Conveyor.*
03137	Cunard Steam-Ship Co. Ltd.: *Manipur.*
03215	Rederiaktiebolaget Salenia: *San Benito.*
03271	Sea-Land Service, Inc.: *Wacosta.*
03294	Companhia de Navegacao Lloyd Brasileiro: *Anna Nery.*
03315	Afran Transport Co.: *Beaufort Sea.*
03359	Puntamar S.A.: *Audacity.*
03413	Baba-Daiko Shosen K.K.: *Hudson Maru.*
03441	Japan Line K.K.: *Japan Jasmin, Japan Olive.*
03453	Kyosei Kisen K.K.: *Seiten.*
03468	Nihonkai Kisen Kabushiki Kaisha: *Honmoku Maru.*
03692	Marmac Corp.: *Coastal 7.*
04049	A/S Mosgulf Shipping Co.: *Strathearn.*
04191	Caribbean-Atlantic Cargo Inc. Panama: *Ondine.*
04196	Otto Candies Inc.: *OC 250.*
04341	Adriatic Shipping Corp.: *Gherania.*
04490	Seiyu Gyogyo Kabushiki Kaisha: *Seiyumaru No. 12.*
04568	United Venture Navigation Co. Ltd.: *Grand Trust.*
04884	Hall Corp. Shipping Ltd.: *Cove Transport, Cape Transport.*
04891	AB A. K. Ferstroms Granitindustrier: *Eric F. Fernstrom, A. K. Fernstrom.*
05138	Rio Amarillo Compania Naviera S.A.: *Arietta.*
05445	Eastern Seaboard Petroleum Co. Inc.: *Eastpet No. 6, Eastpet No. 5, Eastpet No. 3, Eastpet No. 4, Eastpet No. 2, Eastpet No. 1.*
05520	Union Carbide Corp.: *CCT-941, CCT-940, ES-920.*
05552	Dutra & Son, Inc.: *California.*
05624	Pertamina: *Permina Samudra III.*
05736	Flota Cubana de Pesca: *Jucaro.*
05792	Korea Wonyang Fisheries Co. Ltd.: *Kwang Myong 99, Kwang Myong 98, Kwang Myong 153, Kwang Myong 20, Sogrisan, Seolagsan, Kwang Myong 21, Kwang Myong 71, Kwang Myong 95, Kwang Myong 156, Kwang Myong 155, Kwang Myong 92, Kwang Myong 87, Kwang Myong 86, Kwang Myong 85, Kwang Myong 88, Kwang Myong 76, Kwang Myong 83, Kwang Myong 72, Kwang Myong 81, Kwang Myong 75.*
06487	Naviera Ason S. A.: *Patricio.*
06559	Perse Tanker Shipping Corp.: *Sassan.*
06590	Austin Navigation Corp. Ltd.: *Velda.*
06721	Kooli Industrial Co. Ltd.: *O Dae Yang No. 301, O Dae Yang No. 305, O Dae Yang No. 105, O Dae Yang No. 302.*
06754	Triumph Carriers Inc.: *Daishowa Venture.*
06893	Cerro Shipping Co. Ltd.: *Athens Day.*
06925	Bibby Bulk Carriers Ltd.: *Mersey Bridge.*
07283	Evergreen Line S.A.: *Ever Welfare.*
07577	Atlantic-Mediterranean Shipping Corp.: *Medi Star.*
07615	F. Lli Cefalu: *Gabriella C.*
07623	Hawaiian Tug & Barge Co., Ltd.: *HTB-37, Moi.*
07640	Exxon Co. USA: *Exxon Port Everglades.*
07675	Harmony Transport Corp., Inc.: *Unique Harriet.*
07727	Sea Bridge Marine, Inc.: *Yosemite.*
07817	Yick Fung Shipping & Enterprises Co. Ltd.: *Chukchi Sea.*
07928	Partenreederei M/S Carola Reith: *Carola Reith.*
08064	Santa Fe Pomeroy Marine Services Co.: *Navajo.*
08207	Bibby Tankers Ltd.: *Liverpool Bridge.*
08596	Tolmi Navigation Ltd.: *Tolmi.*
09031	Union Mechling Corp.: *Star Diamond.*
09510	Paducah Diesel Service, Inc.: *OR 947, B5.*
09531	Societa Partenopea di Navigazione S.P.A.: *Span Seconda.*
09637	B. E. Williamson, Allen Thomas, George Pine, a partnership: *CC-205.*
09661	Chieh Sheng Maritime S.A.: *Chieh Shun.*
09789	Transportes Maritimos Unidos, S.A.: *Ocean Fighter.*
09880	Onward Shipping Co. (Panama) S.A.: *Onward Elite.*
10094	Echo Marine, Inc.: *Hollywood 2200.*
10120	Sameiet Skaugen-Offshore Supply Ships: *Skauhill.*
10317	Dong Won Ice Co., Ltd.: *Dong Won No. 709, No. 919 Dong Won.*
10449	Metropolitan Ocean Carriers Corp.: *Mantinia.*
10514	Spacia Maritime Co. Ltd. Cyprus: *Myriam O.*
10696	K.G.G., S.A.: *Sea Bird No. 82.*
10997	Spanocean Line Ltd.:*Irish Wasa.*
11118	Hunting & Son Ltd.: *Teesfield.*
11124	SC Deckships 2 Ltd.: *Tarek.*
11246	Timor Shipping Ltd.: *Ocean Valour.*
11297	Marittima Melloni S.P.A.: *Piviere.*
11433	Takamiya Maru Gyogyo K.K.: *Takamiya Maru No. 23, Takamiya Maru No. 15.*
11466	Lee-Vac Ltd.: *S & H No. 1.*
11556	Transfruta-Companhia Nacional de Navios Frigorificos: *Frigoantartico.*
12013	Cyuichi Kanazawa: *Shoun Maru No. 11.*
12217	Canadian National Railway Co.: *Incan St. Laurent.*
13225	Justo Ojeda Perez: *Costa de Terranova.*
13267	Skaugen Offshore Supply Ships: *Skauhill, Skautop.*
13276	Nisshin Shipping Co. Ltd.: *Blue Kochi.*
13342	Halsbury Shipping Co. Ltd.: *Bangkok Star.*
13346	Bibby Transport Ltd. & Bibby Freighters Ltd.: *Northamptonshire.*
13415	Ben Hur Shipping Co. Ltd.: *Nela.*
13438	Suemar S. L.: *Suemar Uno.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-9135 Filed 4-5-78; 8:45 am]

[6730-01]

GLOBAL FREIGHT FORWARDERS, INC. ET AL.

Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916, (Stat. 422 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Global Freight Forwarders, Inc., 609 Fannin Building, Suite 326, Houston, Tex. 77002, Officers: Michael Jester, President/Director; Ken Jester, Vice President; J. James Luck, Secretary/Director.

News World Forwarding Ltd., 3300 Veterans Highway, Bohemia, N.Y. 11716, Officers: Gabriel J. Fazio, President; Gabrielle Fazio, Secretary/Treasurer.

D. E. Reardon Export Co. (d.b.a. Donald E. Reardon), 126 State Street, Boston, Mass. 02109.

John L. Westhorp, d.b.a. Trident Forwarding Service, 10510 SW. 204 Terrace, Miami, Fla. 33189.

A. L's Freight Forwarding Inc., 5282 NW. 72nd Avenue, Miami, Fla. 33152, Officers: Alberto Lahens, President; Celina Lahens, Vice President.

Philip Chalmers, 198 Broadway, New York, N.Y. 10038.

Silvia Martinez, 5874 Freeman Avenue, La Crescenta, Calif. 91214.

Greitzer Brokers (d.b.a. Jerome T. Greitzer), 4635 Border Village Road, San Ysidro, Calif. 92073.

Sincl-Air Maritime Service (d.b.a. Shirley de Sinclair), 2236 Stranahan Drive, Alhambra, Calif. 91803.

Bayton Anthony Duplantis, 1726 Randolph Place, No. 4, Memphis, Tenn. 38138.

By the Federal Maritime Commission.

Dated: April 3, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-9136 Filed 4-5-78; 8:45 am]

[6730-01]

[Docket No. 72-35]

PACIFIC WESTBOUND CONFERENCE

Investigation of Rates, Rules and Practices Pertaining to the Movement of Wastepaper and Woodpulp From United States West Coast Ports to Ports in Japan; Draft Environmental Impact Statement

Upon completion of a Draft Environmental Impact Statement ("DEIS"), the Federal Maritime Commission's Office of Environmental analysis ("OEA") has identified the environmental consequences of the Commission's final resolution in this proceeding. The DEIS indicates that the FMC's final resolution in this proceeding may result in important savings in solid waste management costs, landfill, fossil fuel consumption, air and water pollution and process water. The environmental impact statement is required under Section 4332(2)(c) of NEPA.

Docket No. 72-35 is an investigation to determine whether the Pacific Westbound Conference's ("PWC") rates, rules and practices for moving wastepaper and woodpulp from United States West Coast ports to ports in the Far East violate sections 15, 16, 17, 18(b) (5), and 22 of the Shipping Act of 1916.

The OEA's conclusion is contained in the DEIS which is available on request from the Public Information Office, Room 11413, Federal Maritime Commission, Washington, D.C. 20573, telephone 202-523-5764. Interested

parties may, on or before May 8, 1978, comment on the DEIS by filing statements (exceptions) with the Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573. No final Commission action shall be taken within 90 days following publication of the Notice in the FEDERAL REGISTER.

It should be emphasized that the DEIS is not an official decision of the Commission. It represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the existence of unfair rate discrimination, unreasonable advantage to any particular person or the existence of unreasonable rate levels impeding the foreign commerce of the United States. These legal issues are not relevant to the determination of environmental impact. Therefore, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and the alternatives available.

Copies of comments or exceptions to the DEIS and copies of all future correspondence and pleadings filed in this proceeding shall be served on Chief, Office of Environmental Analysis, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-9137 Filed 4-5-78; 8:45 am]

[1610-01]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on March 23, 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 receipt.

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.

Written comments on the proposed SEC 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 April 24, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

SECURITIES AND EXCHANGE COMMISSION

The SEC requests clearance of a new Form 146, Report of Offering Made in Reliance Upon Rule 146. Form 146 is a notification form and relates to the use of Rule 146 (17 CFR 230.146), the SEC's rule which establishes a "safe harbor" in connection with sales of securities in transactions not involving a public offering. The SEC states that potential respondents to Form 146 are all persons who make use of Commission Rule 146. The SEC estimates potential respondents will number approximately 500 annually and that reporting time will average one hour per response.

NORMAN F. HEYL,
Regulatory Reports,
Review Officer.

[FR Doc. 78-9107 Filed 4-5-78; 8:45 am]

[4110-85]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

ADVISORY COMMITTEE

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1978:

UNITED STATES NATIONAL COMMITTEE ON VITAL AND HEALTH STATISTICS

Date and Time: May 3-4, 1978, 9 a.m.

Place: Snow Room, 5051, HEW North Building, 330 Independence Avenue SW., Washington, D.C. 20201.

Type of meeting: Open for entire meeting.

Purpose: The Secretary and by delegation the Assistant Secretary for Health and the Director, National Center for Health Statistics (NCHS), are charged under section 306 of the Public Health Service Act, as amended, 42 U.S.C. 242k, with the responsibility to collect, analyze, and disseminate national health statistics on vital events and health activities, including the physical, mental, and physiological characteristics of the population, illness, injury, impairment, the supply and utilization of health facilities and manpower, the operation of the health services system, health economic expenditures, and changes in the health status of people; administer the Cooperative Health Statistics System; stimulate and conduct basic and applied research in health data systems and statistical methodology; coordinate the overall health statistical activities of the programs and agencies of the Health Resources Administration and provide technical assistance in the management of statistical information; maintain operational liaison with statistical gathering and processing services of other health agencies, public and private, and provide technical assistance within the limitations of staff resources, research, consultation and training programs in international statistical activities; and participate in the development of national health policy with Federal agencies.

Agenda: (1) Comparability study of DHEW Health Data Systems; (2) Review of progress or development of a National Death Index; (3) Review of ICD 9; (4) Review of charters of the United States National Committee on Vital and Health Statistics (USNCVHS) and Health Data Advisory Committee; (5) Review of USNCVHS Annual Report; (6) Review of Report, "Health, United States, 1976-77;" (7) Review of progress and plan for Public Health Conference on Records and Statistics; and (8) Review of status of National Ambulatory Medical Care Survey—Sampling of survey from American Medical Association.

The meeting is open to the public for observation and participation. Anyone wishing to participate, obtain a roster of members, or other relevant information, should contact Mr. James A. Smith, National Center for Health Statistics, Room 2-12, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-7122.

Agenda items are subject to change as priorities dictate.

Dated: March 30, 1978.

WAYNE RICHEY, Jr.,
Acting Associate Director for Management, Office of Health Policy Research and Statistics.

[FR Doc. 78-9060 Filed 4-5-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Community Planning and Development

[Docket No. N-78-860]

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR INDIAN TRIBES AND ALASKA NATIVES

Pre-application Deadline

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of Pre-application Deadline.

SUMMARY: This notice sets the deadline for filing Pre-applications for Community Development Block Grant Discretionary Funds for Indian Tribes and Alaska Natives for Fiscal Year '78. Pre-applications are required in order to provide HUD with sufficient information upon which to determine which applicants will be invited to submit full applications and to save applicants the cost of preparing full applications which have no chance of

being funded. Pre-applications which are submitted after the deadline will not be considered.

DATES: The deadline for filing pre-applications for Fiscal Year '78 is May 15, 1978.

FOR FURTHER INFORMATION CONTACT:

John Simmons, Deputy Director, Office of Policy Planning, Room 7158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: 202-755-5890.

SUPPLEMENTARY INFORMATION: This notice sets the deadline for submitting pre-applications as provided in 24 CFR 571.301 published by interim rule on March 23, 1978 (43 FR 12221). That interim rule newly established Part 571 as a separate Part applying the Community Development Block Grant Program to Indian Tribes and Alaska Natives. Applicants must now be aware of two pre-application deadlines for Discretionary Funds—one for Indian Tribes and Alaska Natives under Part 571, and the other for all other applicants under Part 570.

Issued at Washington, D.C., March 31, 1978.

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

[FR Doc. 78-9140 Filed 4-5-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6687-A]

ALASKA

Alaska Native Claims Selection; Correction

The notice published in the March 22, 1978, issue of the FEDERAL REGISTER failed to include certain lands on which a State of Alaska selection application was rejected to permit conveyance of the lands to the Native village of Old Harbor (Serial Number AA-6687-A). The notice is hereby corrected as to part III, Lands Outside the Kodiak National Wildlife Refuge, State Selection AA-3002, by adding sections 23 to 27 (fractional), inclusive, all, in T. 35 S., R. 26 W., Seward Meridian (unsurveyed).

SUE A. WOLF,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-9134 Filed 4-5-78; 8:45 am]

[4310-84]

[AA-6701-B and D]

ALASKA

Alaska Native Claims Selection Application

On May 2 and May 16, 1974, Seldovia Native Association, Inc., filed selection applications AA-6701-B and AA-6701-D under the provisions of section 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (Supp. V, 1975)), for the surface estate of lands located in the Seldovia area.

The village application described lands withdrawn by sections 11(a)(1) and 11(a)(2) of the Alaska Native Claims Settlement Act. Section 11(a)(20 of the act, supra, specifically withdrew, subject to valid existing rights, all lands within the townships withdrawn by section 11(a)(1) that have been selected by, or tentatively approved to, but not yet patented to the State of Alaska under the Alaska Statehood Act of July 7, 1958 (72 Stat. 339-340; 48 U.S.C. Ch. 2, Sec. 6(a) and 6(b) (1970)). Section 26 of the Alaska Native Claims Settlement Act further provides that to the extent that there is a conflict between any provisions of that act and any other Federal laws applicable to Alaska, the provisions of the Alaska Native Claims Settlement Act shall govern.

Therefore, in view of the above, selection application a-050903, filed by the State of Alaska pursuant to section 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1970)), on December 29, 1959, as amended, is hereby rejected and the tentative approval granted to the State of Alaska by the decisions of October 4, 1960, August 5, 1964, and November 15, 1966, is hereby rescinded as to the following described lands:

T. 7 S., R. 12 W., Seward Meridian
Sec. 2, all;
Sec. 11, excluding U.S. Survey 1557 and lots 1 and 2 of Tract B of U.S. Survey 3362;
Sec. 13, all;
Sec. 16, all;
Sec. 17, all;
Sec. 19, all;
Sec. 20, all;
Sec. 21, all;
Sec. 22, excluding U.S. Survey 3606;
Sec. 23 to 28, inclusive, all;
Sec. 31 to 36, inclusive, all.
Containing approximately 8,465 acres.

The written description submitted by Seldovia Native Association, Inc. in their selection does not include lands within section 16, T. 7 S., R. 12 W., Seward Meridian; however, the map submitted appears to include these lands. Regulation 43 CFR 2650.2(e)(5) states that if the written description shown on the application and the map portrayal accompanying the application do not agree the delineation shown on the map shall be controlling. Therefore, the lands are considered selected by Seldovia Native Association, Inc.

A portion of the lands described are located within 2 miles from the boundary of the first-class city of Seldovia as it existed on December 18, 1971. Seldovia Native Association, Inc. is organized by the Natives of Seldovia, constituting the first-class city. Therefore, those lands within the 2-mile limit are considered available for conveyance to Seldovia Native Association, Inc. (See 43 CFR 2650.6(a)).

The selection applications of Seldovia Native Association, Inc. as to the lands described below are properly filed and meet the requirements of the act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, aggregating approximately 22,296.05 acres, is considered proper for acquisition by Seldovia Native Association, Inc., and is hereby approved for conveyance pursuant to section 14(a) of the act.

Lots 1 and 2 of U.S. Survey 4752, situated on a spit on the northwest shore of Seldovia Bay.
Containing 7.72 acres.

SEWARD MERIDIAN, ALASKA

T. 6, S., R. 12 W.
Sec. 4, lot 4, N½NW¼, SW¼NW¼.
Containing 147.33 acres.
T. 6 S., R. 14 W.
Sec. 3, NE¼NE¼;
Sec. 4, W½SW¼;
Sec. 5, W½NE¼, SE¼NE¼, E½SE¼;
Sec. 8, NW¼NE¼, N½NW¼.
Containing 440.00 acres.

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 7 S., R. 12 W.
Sec. 2 (fractional), all;
Sec. 11 (fractional), excluding U.S. Survey 1557, and lots 1 and 2 of Tract B of U.S. Survey 3362;
Sec. 13 (fractional), all;
Sec. 16 (fractional), all;
Sec. 17 (fractional), all;
Sec. 19 (fractional), all;
Sec. 20 (fractional), all;
Sec. 21 (fractional), all;
Sec. 22 (fractional), excluding U.S. Survey 3606;
Secs. 23 to 25 (fractional), all;
Secs. 26 to 28, inclusive, all;
Secs. 31 to 36, inclusive, all.
Containing approximately 8,465 acres.
T. 8 S., R. 12 W.
Secs. 1 to 4, inclusive, all;
Secs. 12 and 13, all;
Secs. 28 and 29 (fractional), all;
Sec. 30 (fractional), excluding U.S. Survey 3605;
Secs. 31, 32 and 33 (fractional), all;
Sec. 34, all.
Containing approximately 7,080 acres.

T. 10 S., R. 14 W.
Sec. 2, excluding lots 1 and 2 of U.S. Survey 4766;
Sec. 3, excluding lot 2 of U.S. Survey 4766;
Secs. 11 and 12, excluding lot 1 of U.S. Survey 4766;
Secs. 13 and 14, all.
Containing approximately 4,786 acres.
T. 9 S., R. 15 W.
Sec. 1, excluding lot 1, U.S. Survey 317, U.S. Survey 954, U.S. Survey 2869, and Native allotment AA-7233;
Sec. 2, N½, E½SW¼, E½NW¼SW¼, NW¼NW¼SW¼, NE¼SW¼SW¼, SE¼;
Sec. 11, E½NE¼, NW¼NE¼, E½SW¼NE¼, NW¼SW¼NE¼, E½NE¼NW¼, NW¼NE¼NW¼, E½NE¼SE¼, NW¼NE¼SE¼;
Sec. 12, NE¼ (fractional), excluding U.S. Survey 958 and U.S. Survey 3632; NW¼, N½SW¼, NE¼SW¼SW¼, N½SE¼SW¼, SE¼;
Containing approximately 1,370 acres.

The lands approved in this decision for conveyance to Seldovia Native Association, Inc. Include approximately 8,465 acres, properly selected by and tentatively approved in part to the State of Alaska, for a cumulative total of 44,801.52 acres. This does not exceed the 69,120 acres permitted under section 12(a)(1) of ANCSA.

The lands in Ts. 7 and 8 S., R. 12 W., Seward Meridian are now surveyed. The surveys as such will not accommodate selections filed by Seldovia Native Association, Inc., for conveyances. For purposes of identifying selections as filed by the State of Alaska and the Seldovia Native Association, Inc., the descriptions in this decision are based on the unsurveyed protracted townships.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, as prescribed and directed by the act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945;

2. A right-of-way thereon for the construction of railroads, telegraph and telephone lines, as prescribed and directed by the act of March 12, 1914, 38 Stat. 305; 43 U.S.C. 975d;

3. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613 (Supp. V, 1975)); and

4. Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616 (Supp. V, 1975)), the following public easements referenced by easement identification number (EIN) on the easement map in case file AA-6701-EE are reserved to the United States and subject to further regulation thereby:

a. (EIN 6 (D9 34, 01)) Easements for two branches of an existing access trail twenty-five (25) feet in width from China Poot Bay easterly to public lands where they join the main trail in section 19, T. 7 S., R. 11 W., Seward Meridian. One branch trail begins in section 25 and the other in section 24 (at the site easement EIN 18 C5 (P11)) both in T. 7 S., R. 12 W., Seward Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

b. (EIN 11 D9 (d9 39)) A continuous linear easement twenty-five (25) feet in width upland of and parallel to the mean high tide line in order to provide access to and along the marine coastline and use of such shore for purposes such as beaching of watercraft or aircraft, travel along the shore, recreation, and other similar uses. Deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction. The easement is subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route, at no cost to the United States, prior to the creation of such obstruction.

c. (EIN 12C (C 42)) The right of the United States to enter upon the lands hereinabove granted for cadastral, geodetic or other survey purposes is reserved, together with the right to do all things necessary in connection therewith.

d. (EIN 13C (C 43)) Easements for the transportation of energy, fuel, and natural resources which are the property of the United States or which are intended for delivery to the United States or which are produced by the United States. These easements also include the right to build any related facilities necessary for the exercise of the right to transport energy, fuel, and natural resources, including those related facilities necessary during periods of planning, locating, constructing, operating, maintaining, or terminating transportation systems. The specific location of these easements shall be determined only after consultation with the owner of the servient estate. Whenever the use of such easements will require removal or relocation of any structure owned or authorized by the owner of the servient estate, such use shall not be initiated without the consent of the owner of such improvement; provided, however, that the United States may exercise the right of eminent domain if such consent is not given. Only those portions of these easements that are actually in use or that are expressly authorized on March 3, 1996, shall continue to be in force.

e. (EIN 18 C5 (P 11)) A one (1) acre site easement upland of the mean high tide line in section 24, T. 7 S., R. 12 W., Seward Meridian, on the north side of an arm of China Poot Bay. The site is for camping, staging, and vehicle use.

f. (EIN 19 C5 (P 4)) An easement for an existing access trail twenty-five (25) feet in width from Seldovia southerly to Seldovia Lake. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

g. (EIN 21 C4 (S 3)) An easement for a proposed access trail twenty-five (25) feet in width from trail EIN 19 C5 (P 4) at the outlet of Seldovia Lake southerly to public lands in section 10, T. 10 S., R. 14 W., Seward Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

h. (EIN 22 C4) An easement for a proposed access trail twenty-five (25) feet in width from the existing trail EIN 19 C5 (P 4) in section 2, T. 10 S., R. 14 W., Seward Meridian, southerly along the east shore of Seldovia Lake at the line of ordinary high water to U.S. Survey No. 4766, lot 1. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

i. (EIN 25 C4) An easement two hundred (200) feet in width for an existing road, known locally as the Sterling Highway, as it crosses section 4, T. 6 S., R. 14 W., Seward Meridian. The easement is one hundred thirty-two (132) feet wide on the east side and sixty-eight (68) feet wide on the west side of the existing highway centerline. the usage of roads and trails will be controlled by applicable State or Federal law or regulation.

j. (EIN 26 D9 (D9 36, 0 2)) An easement for an existing access trail twenty-five (25) feet in width from the south end of Sadie Cove at site easement 14 D9 (D9 35) in section 20, T. 8 S., R. 12 W., Seward Meridian, southeasterly along the right bank of a creek to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulations.

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978. Conformance is contingent upon resolution of the litigation *Calista, et al.* v. *Andrus* and implementation of the Secretary's new easement policy.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those

created by any lease (including a lease issued under section 6(g) of the Alaska Statehood Act (72 Stat. 339, 341; 48 U.S.C. 111719, 111720)), contract, permit, right-of-way, of easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him;

3. Requirements of section 14(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 703; 43 U.S.C. 1601, 1613 (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section;

4. A right-of-way, AA-9565, thirty (30) feet each side of the centerline for an electric distribution and transmission line within section 12, T. 9 S., R. 15 W., Seward Meridian, for the Homer Electric Association, Inc., issued pursuant to Pub. L. 94-579 (October 21, 1976), Title V, 90 Stat. 2743.

5. The terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Cook Inlet Region, Inc., Seldovia Native Association, Inc. and other Cook Inlet village corporations. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the agreement is located in the Bureau of Land Management easement case file for Seldovia Native Association, Inc., serialized AA-6701-EE. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501.

6. The following third-party interests, if valid, created and identified by the State of Alaska, as provided by section 14(g) of ANCSA, all of which are located in T. 7 S., R. 12 W., Seward Meridian:

Right-of-way permits:

1. ADL 25909 traversing selected lands in sections 11, 13, 22, 23, 24, 27, 28, 32, 33.

2. ADL 42875 traversing selected lands in sections 20, 29 and 30.

Conveyance of the remaining entitlement to Seldovia Native Association, Inc. shall be made at a later date. When conveyance is granted to Seldovia Native Association, Inc. for the surface estate, conveyance of the subsurface estate of the lands described above shall be granted to Cook Inlet Region, Inc. pursuant to section 14(f) of ANCSA, and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the lands described.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the FEDERAL REGISTER and once a week, for four (4) consecutive weeks, in the Anchorage Times. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510, and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501; also:

1. Any party receiving service of this decision by mail shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until May 8, 1978, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

4. If Seldovia Native Association, Inc. or cook Inlet Region, Inc. objects to any easement which is identified herein for reservation in the conveyance which is subject to the discretion of the State Director and not reserved pursuant to an express Secretarial directive, a petition for reconsideration must be filed within 30 days with the State Director, Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510. A copy of the petition should be served upon the regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. If a petition for reconsideration is not filed, it will be deemed that the right to contest any such easement has been waived.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of, and requirements for, filing an appeal may be obtained from the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

SUE A. WOLF,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-9131 Filed 4-5-78; 8:45 am]

[4310-84]

[AA-6701-D]

ALASKA

Alaska Native Claims Selection Application

On May 16, 1974, Seldovia Native Association, Inc., filed selection application AA-6701-D under the provisions of section 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (Supp. V, 1975)), for the surface estate of lands located in the Seldovia area.

The village application described lands withdrawn by sections 11(a)(1) and 11(a)(2) of the Alaska Native Claims Settlement Act. Section 11(a)(2) of the act, supra, specifically withdrew, subject to valid existing rights, all lands within the townships withdrawn by section 11(a)(1) that have been selected by, or tentatively approved to, but not yet patented to the State of Alaska under the Alaska Statehood Act of July 7, 1958 (72 Stat. 339-340; 48 U.S.C. ch. 2, sec. 6(a) and 6(b) (1970)). Section 26 of the Alaska Native Claims Settlement Act further provides that to the extent that there is a conflict between any provisions of that act and any other Federal laws applicable to Alaska, the provisions of the Alaska Native Claims Settlement Act shall govern.

(It should be noted that lands covered by open-to-entry leases identified as ADL Nos. 29454, 41005, 41084, 41085, 41425, 41553, 41704, 41862, 42889, 42909, 42954, 44546, 45000, 45373, 47021, 47164, 51665, 55132, 55137, 55138, and 55210 were excluded from the selection application filed by Seldovia Native Association, Inc. Regulation 43 CFR 2651.4(b) provides that:

> * * * Selections shall be * * * reasonably compact * * *. The total area selected will not be considered to be reasonably compact if (1) it excludes other lands available for selection within its exterior boundaries; or (2) lands which are similar in character to the village site or lands ordinarily used by the village inhabitants are disregarded in the selection process; or (3) an isolated tract of public land of less than 1,280 acres remains after selection.

The selection as filed does not meet the requirements for compactness as required by section 12(a)(2) of ANCSA and the regulation given above. Therefore, the lands excluded by Seldovia Native Association, Inc., are considered selected in order that the requirements for compactness are met.)

Therefore, in view of the above, selection application A-050903, filed by the State of Alaska pursuant to section 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339-340; 48 U.S.C. ch. 2, sec. 6(b) (1970)), on December 29, 1959, as amended, is hereby rejected and the tentative approval granted to the State of Alaska by the decisions of October 4, 1960, August 5, 1964, and November 15, 1966, is hereby rescinded as to the following described lands:

Lot 4 of U.S. Survey 3973;
Lot 2 of U.S. Survey 4734;
Lots 1, 2, and 3 of U.S. Survey 4737; U.S. Survey 4738;

T. 7 S., R. 12 W., Seward Meridian
Sec. 1, all on mainland excluding Tracts A and B of U.S. Survey 3369, lots 2, 3, 4, 5, and 6 of U.S. Survey 4734; U.S. Survey 4735, Alaska State Land Survey Nos. 75-34, 75-57 and 73-42 (Tracts A and B);
Sec. 10, excluding U.S. Survey 1539 and lots 1, 2, and 3 of U.S. Survey 4737;
Sec. 12, excluding U.S. Survey 3109 and lots 2, 3, 5, and 6 of U.S. Survey 4734;
Secs. 14 and 15, including Tract A of Harbor Heights Alaska Subdivision and excluding U.S. Survey 1539; U.S. Survey 2893; Tract A of U.S. Survey 3362; U.S. Survey 3908; U.S. Survey 3918; lots 1, 2, 3, and 4 of U.S. Survey 3973; lots 1 and 2 of U.S. Survey 4736; lots 1 and 3 of U.S. Survey 4737; and lots 1 to 13, inclusive, Block 1 and lots 1 to 11, inclusive, Block 2 of Harbor Heights Alaska Subdivision (State patent No. 702);
Sec. 29, excluding Native allotment AA-7602, and U.S. Survey 4738;
Sec. 30, excluding U.S. Survey 3912 and U.S. Survey 3977; and Alaska State Land Survey No. 76-114 (Tracts A, C and D).

Containing approximately 1,715.24 acres.

The State of Alaska issued patents for lands to which it had received tentative approval. Section 6(g) of the Alaska Statehood Act gave the State authority to execute conditional leases and to make conditional sales of such lands. Thus, valid existing rights had been created and patents were issued to third parties by the State of Alaska. These patents shall be accorded the same dignity as Federal patents. See 19 IBLA 178 (March 18, 1975), ANCAB No. VLS 75-14 and ANCAB No. VLS 75-15.

In view of this, State selection application A-050903 remains in effect, tentative approval remains valid and village selection AA-6701-D is rejected as to the following lands:

Lot 3 of U.S. Survey No. 4735 (patent No. 874), containing 3.44 acres;
U.S. Survey No. 4735 (patent No. 1027), containing 4.95 acres;
Harbor Heights Alaska Subdivision (State of Alaska Survey), Block 1, lots 1-13 and Block 2, lots 1-11, located within sections 14 and 15, T. 7 S., R. 12 W., Seward Meridian (patent Nos. 702 and 1816), containing approximately 54.59 acres;
That portion of Ismailof Island located in section 1, T. 7 S., R. 12 W., Seward Meridian (patent No. 1121), containing 67.425 acres;
Tract B of Alaska State Land Survey No. 73-42, located within section 1, T. 7 S., R. 12 W., Seward Meridian, containing 3.92 acres, more or less, according to the survey plat recorded in the Homer Recording Office on November 22, 1976, as plat No. 76-100 (patent No. 3287, ADL 42889);
Alaska State Land Survey No. 75-57, located within section 1, T. 7 S., R. 12 W., Seward Meridian, containing 4.55 acres, more or less, according to the survey plat recorded in the Homer Recording Office on November 22, 1976, as plat No. 76-101 (patent No. 3291, ADL 47021);
Tract A of Alaska State Land Survey No. 73-42, located within section 1, T. 7 S., R. 12 W., Seward Meridian, containing 3.29 acres, more or less, according to the survey plat recorded in the Homer Recording Office on November 22, 1976, as plat No. 76-100 (patent No. 3297, ADL 42909);
Alaska State Land Survey No. 75-34, located within section 1, T. 7 S., R. 12 W., Seward Meridian, containing 4.47 acres, more or less, according to the survey plat recorded in the Homer Recording Office on December 29, 1976, as plat No. 76-115 (patent No. 3336, ADL 55137);
Tract C of Alaska State Land Survey No. 76-114, located within section 30, T. 7 S., R. 12 W., Seward Meridian, containing 4.69 acres, more or less, according to the survey plat recorded in the Seldovia Recording Office on July 5, 1977, as plat No 77-4 (patent No. 3413, ADL 45000);
Tract D of Alaska State Land Survey No. 76-114, located within section 30, T. 7 S., R. 12 W., Seward Meridian, containing 4.99 acres more or less, according to the survey plat recorded in the Seldovia Recording Office on July 5, 1977, as plat No. 770-4 (patent No. 3414, ADL 41862);
Tract A of Alaska State Land Survey No. 76-114, located within section 30, T. 7 S., R. 12 W., Seward Meridian, containing 5.00 acres more or less, according to the survey plat recorded in the Seldovia Recording Office on July 5, 1977, as plat No. 77-4 (patent No. 3415, ADL 41553).

The selection application of Seldovia Native Association, Inc., as to the lands described below is properly filed and meets the requirements of the act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, aggregating approximately 1,715.24 acres, is considered proper for acquisition by Seldovia Native Association, Inc., and is hereby approved for conveyance pursuant to section 14(a) of the act:

Lot 4 of U.S. Survey 3973, situated on the northeasterly shore of China Poot Bay.
Lot 2 of U.S. Survey 4734, situated south of Ismailof Island in Halibut Cove, Kachemak Bay.
Lots 1, 2, and 3 of U.S. Survey 4737, situated on the westerly shore of Peterson Bay, Kachemak Bay area.
U.S. Survey 4738, situated on McKeon Flats on the southerly side of Kachemak Bay.

Containing 126.83 acres.

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 7 S., R. 12 W.
Sec. 1 (fractional), excluding Ismailof Island; U.S. Survey 3607; U.S. Survey 4735; Tracts A and B of U.S. Survey 3369; and lots 2, 3, 4, 5, and 6 of U.S. Survey 4734; Tract A (State patent No. 3297) and Tract B (State patent No. 3287) of Alaska State Land Survey No. 73-42; Alaska State Land Survey No. 75-57 (State patent No. 3291) and Alaska State Land Survey No. 75-34 (State patent No. 3336);
Sec. 10 (fractional), excluding lots 1, 2, and 3 of U.S. Survey 4737; and U.S. Survey 1539;
Sec. 12, excluding U.S. Survey 3109 and lots 2, 3, 5, and 6 of U.S. Survey 4734;
Secs. 14 and 15, including Tract A of Harbor Heights Alaska Subdivision and excluding U.S. Survey 1539; U.S. Survey 2893; Tract A of U.S. Survey 3362; U.S. Survey 3908; U.S. Survey 3918; lots 1, 2, 3, and 4 of U.S. Survey 3973; lots 1 and 2 of U.S. Survey 4736; lots 1 and 3 of U.S. Survey 4737; and lots 1 to 13, inclusive, Block 1 and lots 1 to 11, inclusive, Block 2 of Harbor Heights Alaska Subdivision (State patent Nos. 702 and 1816);
Sec. 29, excluding U.S. Survey 4738 and Native allotment AA-7602;
Sec. 30 (fractional), excluding U.S. Survey 3912, U.S. Survey 3977; Tract A (State patent No. 3415), Tract C (State patent No. 3413), and Tract D (State patent no. 3414) of Alaska State Land Survey No. 76-114.

Containing approximately 1,588.41 acres.

The lands approved in the decision for conveyance to Seldovia Native Association, Inc., include approximately 1,715.24 acres, properly selected by and tentatively approved in part to the State of Alaska, for a cumulative total of 36,336 acres. This does not exceed the 69,120 acres permitted under 12(a)(1) of ANCSA.

The lands in T. 7 S., R. 12 W., Seward Meridian, are now surveyed. The survey as such will not accommodate selections filed by Seldovia Native Association, Inc., for conveyances. For purposes of identifying selections as filed by the State of Alaska and the Seldovia Native Association, Inc., the descriptions in this decision are based on the unsurveyed protracted township.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, as prescribed and directed by the act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945;

2. A right-of-way thereon for the construction of railroads, telegraph and telephone lines, as prescribed and directed by the act of March 12, 1914, 38 Stat. 305; 43 U.S.C. 975d;

3. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613 (Supp. V, 1975)); and

4. Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616 (Supp. V, 1975)), the following public easements referenced by easement identification number (EIN) on the easement map in case file AA-6701-EE are reserved to the United States and subject to further regulation thereby:

(a) (EIN 11 D9 (D9 39)) A continuous linear easement twenty-five (25) feet in width upland of and parallel to

the mean high tide line in order to provide access to and along the marine coastline and use of such shore for purposes such as beaching of watercraft or aircraft, travel along the shore, recreation, and other similar uses. Deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction. The easement is subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route, at no cost to the United States, prior to the creation of such obstruction.

(b) (EIN 12C (C 42)) The right of the United States to enter upon the lands hereinabove granted for cadastral, geodetic, or other survey purposes is reserved, together with the right to do all things necessary in connection therewith.

(c) (EIN 13 C (C 43)) Easements for the transportation of energy, fuel, and natural resources which are the property of the United States or which are intended for delivery to the United States or which are produced by the United States. These easements also include the right to build any related facilities necessary for the exercise of the right to transport energy, fuel, and natural resources, including those related facilities necessary during periods of planning, locating, constructing, operating, maintaining, or terminating transportation systems. The specific location of these easements shall be determined only after consultation with the owner of the servient estate. Whenever the use of such easements will require removal or relocation of any structure owned or authorized by the owner of the servient estate, such use shall not be initiated without the consent of the owner of such improvement: *Provided, however,* That the United States may exercise the right of eminent domain if such consent is not given. Only those portions of these easements that are actually in use or that are expressly authorized on March 3, 1996, shall continue to be in force.

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978. Conformance is contingent upon resolution of the litigation *Calista, et al.* v. *Andrus* and implementation of the Secretary's new easement policy.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under section 6(g) of the Alaska Statehood Act (72 Stat. 339, 341; 48 U.S.C. 111719, 111720)), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him;

3. Requirements of section 14(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 703; 43 U.S.C. 1601, 1613 (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section;

4. The terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Cook Inlet Region, Inc., Seldovia Native Association, Inc. and other Cook Inlet village corporations. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the agreement is located in the Bureau of Land Management easement case file for Seldovia Native Association, Inc., serialized AA-6701-EE. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501.

5. The following third-party interests, if valid, created and identified by the State of Alaska, as provided by section 14(g) of ANCSA, all of which are located in T. 7 S., R. 12 W., Seward Meridian:

(a) Open-to-entry leases

1. ADL 29454 located in lot 4 of U.S. Survey 3973.

2. ADL 41005 located in SE¼SE¼ of section 1 and NE¼NE¼ of section 12.

3. ADL 41084 located in NW¼SW¼ of section 29.

4. ADL 41085 located in NW¼SW¼ of section 29.

5. ADL 41425 located in NE¼NE¼ of section 12.

6. ADL 41704 located in SW¼SW¼ of section 30.

7. ADL 42954 located in SW¼SE¼ of section 1.

8. ADL 44546 located in SE¼SE¼ of section 1 and NE¼NE¼ of section 12.

9. ADL 45373 located in NE¼NE¼ of section 12.

10. ADL 47164 located in SW¼SE¼ of section 1.

11. ADL 51665 located in SE¼SW¼ of section 1.

12. ADL 55132 located in SW¼SW¼ of section 1.

13. ADL 55138 located in S½SW¼ of section 1.

14. ADL 55210 located in NE¼NE¼ of section 12.

(b) Right-of-Way Permits

1. ADL 25909 traversing selected lands in sections 1, 12, 14, 29 and 30.

2. ADL 42875 traversing selected lands in sections 29 and 30.

Secretarial Order 3016 of December 14, 1977, establishes the policy of the Department of the Interior to valid existing rights under ANCSA. However, the order is not retroactive in that it does not affect the final decision previously rendered by the Alaska Native Claims Appeal Board, VLS 75-14 and 15.

Conveyance of the remaining entitlement to Seldovia Native Association, Inc., shall be made at a later date. When conveyance is granted to Seldovia Native Association, Inc., for the surface estate, conveyance of the subsurface estate of the lands described above shall be granted to Cook Inlet Region, Inc., pursuant to section 14(f) of ANCSA, and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the lands described.

In accordance with departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the FEDERAL REGISTER and once a week, for four (4) consecutive weeks, in the Anchorage Times. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510, and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501; also:

1. Any party receiving service of this decision by mail shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until May 8, 1978, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

4. If Seldovia Native Association, Inc., or Cook Inlet Region, Inc., objects to any easement which is identified herein for reservation in the conveyance which is subject to the discretion of the State Director and not reserved pursuant to an express Secretarial directive, a petition for reconsideration must be filed within 30 days with the State Director, Bureau of

Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510. A copy of the petiton should be served upon the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. If a petition for reconsideration is not filed, it will be deemed that the right to contest any such easement has been waived.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of, and requirements for, filing an appeal may be obtained from the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

SUE A. WOLFF,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-9132 Filed 4-5-78; 8:45 am]

[4310-84]

[AA-6685-B]

ALASKA

Alaska Native Claims Selection Application

On June 25, 1974, Ninilchik Natives Association, Inc., filed selection application AA-6685-B under the provisions of section 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (Supp. V, 1975) hereinafter ANCSA), for the surface estate of lands located in the Ninilchik area.

The village application described lands withdrawn by sections 11(a)(1) and 11(a)(2) of the Alaska Native Claims Settlement Act. Section 11(a)(2) of the act, supra, specifically withdrew, subject to valid existing rights, all lands within the townships withdrawn by section 11(a)(1) that have been selected by, or tentatively approved to, but not yet patented to the State of Alaska under the Alaska Statehood Act of July 7, 1958 (72 Stat. 339-340; 48 U.S.C. Ch. 2, Sec. 6(b) (1970)). Section 26 of the Alaska Native Claims Settlement Act further provides that to the extent that there is a conflict betweeen any provisions of that act and any other Federal laws applicable to Alaska, the provisions of the Alaska Native Claims Settlement Act shall govern.

Therefore, in view of the above, the following tentative approvals granted to the State of Alaska are hereby rescinded and the State selection applications are hereby rejected as to the lands described below:

State selection A-050463-C filed on October 30, 1959, as amended; tentatively approved on March 1, 1962.

T. 1 N., R. 12 W., Seward Meridian, Alaska.
A portion of Tract A more particularly described as (protracted):
Secs. 25 and 26, all;
Secs. 35 and 36, all.
Containing approximately 2,560 acres.

State selection A-050910 filed on December 29, 1959, as amended; tentatively approved on August 9, 1963.

T. 1 S., R. 12 W., Seward Meridian, Alaska.
A portion of the surveyed township more particularly described as (protracted):
Secs. 2 to 4, inclusive, all;
Secs. 9 to 16, inclusive, all;
Secs. 21 to 29, inclusive, all;
Secs. 31 to 34, inclusive, all;
Sec. 35, excluding Native allotment AA-7792;
Sec. 36, all.
Containing approximately 16,485 acres.

State selection A-050914 filed on December 29, 1959, as amended; tentatively approved on August 6, 1963.

T. 2 S., R. 12 W., Seward Meridian, Alaska.
A portion of the surveyed township more particularly described as (protracted):
Sec. 1, all;
Sec. 2, excluding Native allotment AA-6998 Parcel C;
Secs. 3 to 8, inclusive, all;
Sec. 9, excluding Native allotment AA-6996;
Sec. 10, excluding Native allotment AA-6996;
Secs. 11 to 14, inclusive, all;
Sec. 15, excluding Native allotment AA-6995;
Sec. 16, excluding Native allotment AA-6995;
Secs. 17 and 18, all;
Sec. 19, excluding Tract C of Alaska State Land Survey 72-82 (State Patent No. 2120), Tract B of Alaska State Land Survey 72-82 (State Patent No. 2127), Tract A of Alaska State Land Survey 72-82 (State Patent No. 2273), Tract F of Alaska State Land Survey 72-41 (State Patent No. 2140), Tract E of Alaska State Land Survey 72-41 (State Patent No. 2064);
Sec. 20, all;
Sec. 30, excluding Tract E of Alaska State Land Survey 72-41 (State Patent No. 2064), Tract F of Alaska State Land Survey 72-41 (State Patent No. 2140), and Tract A of Alaska State Land Survey 73-67 (State Patent No. 2125);
Sec. 31, all.
Containing approximately 13,541 acres.

State selection A-050921 filed on December 29, 1959, as amended; tentatively approved on August 9, 1963.

T. 3 S., R. 12 W., Seward Meridian, Alaska.
A portion of the surveyed township more particularly described as (protracted):
Secs. 6 to 9 inclusive, all;
Sec. 16, all;
Secs. 21 and 22, all;
Sec. 27, all;
Sec. 34, all.
Containing approximately 5,724 acres.

State selection A-050912 filed on December 29, 1959, as amended; tentatively approved on August 9, 1963, as amended.

T. 2 S., R. 13 W., Seward Meridian, Alaska.
Sec. 6, lots 1, 2, 3, 4 and 5, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, excluding Native allotment AA-6998;
Sec. 7, E½NE¼, NE¼SE¼;
Sec. 9, W½NE¼, SE¼NE¼, NW¼, NE¼SE¼, E½SE¼SE¼;
Sec. 16, NE¼, E½NE¼NW¼, S½NW¼;
Sec. 17, S½N½.
Containing approximately 1,265.45 acres.

T. 2 S., R. 13 W., Seward Meridian, Alaska
Those portions of Tract A more particularly described as (protracted):
Secs. 1 and 2, all;
Sec. 10, excluding Native allotment AA-6998 Parcel B;
Secs. 11 to 14, inclusive, all;
Sec. 15, excluding Native allotment AA-6998 Parcel B;
Secs. 16 and 17, S½;
Secs. 18 to 21, Inclusive, all;
Sec. 22, excluding Native allotment AA-7055;
Sec. 23, all;
Sec. 24, excluding Tract A of Alaska State Land Survey 72-81 (State Patent No. 2115), Alaska State land Survey No. 73-54 (State Patent No. 2094), Alaska State Land Survey No. 74-73 (State Patent No. 2429);
Sec. 25, excluding Alaska State Land Survey 73-54 (State Patent No. 2094), Alaska State Land Survey 74-73 (State Patent No. 2429) and Tract C of Alaska State Land Survey No. 72-40 (State Patent No. 2261);
Secs. 26 to 30, inclusive, all;
Sec. 36, all.
Containing approximately 14,433 acres.

State selection A-050919 filed on December 29, 1959, as amended; tentatively approved August 9, 1963.

T. 3 S., R. 13 W., Seward Meridian, Alaska.
A portion of the surveyed township more particularly described as (protracted):
Sec. 1, all;
Secs. 11 and 12, all;
Secs. 14 and 15, all;
Secs. 21 and 22, all;
Secs. 28 and 29, all;
Secs. 31 and 32, all.
Containing approximately 7,029 acres.

State selection A-057894 filed on August 17, 1962, as amended, and State selection A-060527 filed on November 29, 1963, as amended.

T. 1 S., R. 14 W., Seward Meridian, Alaska.
Sec. 34, E½NE¼SW¼.
Containing approximately 20 acres.

State selection A-050361 filed on October 13, 1959, as amended; tentatively approved on September 27, 1963, February 9, 1961 and January 23, 1964.

T. 3 S., R. 14 W., Seward Meridian, Alaska.
A portion of Tract A more particularly described as (protracted):
Secs. 22 to 28, inclusive, all;
Secs. 33 to 36, inclusive, all.
Containing approximately 7,040 acres.

In addition, the State of Alaska amended selections A-050361, A-050463, A-050912, A-056537, A-056658, A-057894, and A-060527, on June 16, 1972, to include additional public lands. These lands were withdrawn for Native selection by section 11(a)(1) of ANCSA at that time and therefore were not available for selection by the State of Alaska. In view of this, these selections are hereby rejected as to the following described lands:

T. 2 N., R. 12 W., Seward Meridian, Alaska.
Sec. 11, lots 1, 2 and 3, W½NE¼NW¼ SE¼, NW¼SE¼NW¼SE¼;
Sec. 13, NE¼SW¼;
Sec. 23, SE¼NW¼;
Sec. 33, SW¼NW¼, W½SW¼, N½SE¼, SE¼SE¼.
Containing approximately 449.15 acres.
T. 1 N., R. 12 W., Seward Meridian, Alaska.
Sec. 8, N½NE¼, SE¼NE¼, NE¼SE¼.
Containing approximately 160 acres.
T. 2 S., R. 12 W, Seward Meridian, Alaska. A portion of the surveyed township more particularly described as (protracted):
Sec. 1, all;
Sec. 2, excluding Native allotment AA-6998 Parcel C;
Secs. 3 to 8, inclusive, all;
Sec. 9, excluding Native allotment AA-6996;
Sec. 10, excluding Native allotment AA-6996;
Secs. 11 to 14, inclusive, all;
Sec. 15, excluding Native allotment AA-6995;
Sec. 16, excluding Native allotment AA-6995;
Secs. 17 and 18, all;
Sec. 19, excluding Tract C of Alaska State Land Survey 72-82 (State Patent No. 2120). Tract B of Alaska State Land Survey 72-82 (State Patent No. 2127), Tract A of Alaska State Land Survey 72-82 (State Patent No. 2273), Tract F of Alaska State Land Survey 72-41 (State Patent No. 2140), Tract E of Alaska State Land Survey 72-41 (State Patent No. 2064);
Sec. 20, all;
Sec. 30, excluding Tract E of Alaska State Land Survey 72-41 (State Patent No. 2064), Tract F of Alaska State Land Survey 72-41 (State Patent No. 2140), and Tract A of Alaska State Land Survey 73-67 (State Patent No. 2125);
Sec. 31, all.
Containing approximately 13,541 acres.
T. 1 S., R. 13 W., Seward Meridian, Alaska.
Sec. 7, lots 1 and 2, SW¼NE¼;
Sec. 31, SE¼.
Containing approximately 310.77 acres.
T. 2 S., R. 13 W., Seward Meridian, Alaska.
Sec. 7, W½E½, W½SE¼SE¼, W½E½SE¼SE¼;
Sec. 9, N½SW¼, E½SE¼SW¼, W½SE¼, W½SE¼SE¼;
Sec. 17, NW¼NE¼, N½NW¼.
Containing 510 acres.
T. 1 S., R. 14 W., Seward Meridian, Alaska.
Sec. 26, W½NW¼SW¼.
Containing approximately 20 acres.
T. 2 S., R. 14 W., Seward Meridian, Alaska.
Sec. 1, N½SW¼;
Sec. 10, E½SE¼, SW¼SE¼;
Sec. 12, E½SE¼;
Sec. 13, W½NW¼.
Containing approximately 360 acres.
T. 3 S., R. 14 W., Seward Meridian, Alaska.
Sec. 5, SW¼NE¼, N½SE¼, SW¼SE¼;
Sec. 30, lot 2, E½NW¼.
Containing approximately 276.85 acres.
T. 4 S., R. 14 W., Seward Meridian, Alaska.
Sec. 21, NW¼;
Sec. 29, S½N½;
Sec. 32, E½NE¼, E½W½NE¼, S½NW¼NW¼NE¼, SW¼NW¼NE¼, W½SW¼NE¼.
Containing approximately 475 acres.

The selection application of Ninilchik Natives Association, Inc. as to the lands described below is properly filed and meets the requirements of the act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands is considered proper for acquisition by Ninilchik Natives Association, Inc., and is hereby approved for conveyance pursuant to section 14(a) of the act:

SEWARD MERIDIAN, ALASKA

T. 1 N., R. 12 W., Surveyed.
Sec. 8, N½NE¼, SE¼NE¼, NE¼SE¼.
Containing approximately 160 acres.
T. 1 N., R. 12 W. A portion of Tract A more particularly described as (protracted):
Secs. 25 and 26, all;
Secs. 35 and 36, all.
Containing approximately 2,560 acres.
T. 2 N., R. 12 W., Surveyed.
Sec. 11, lots 1, 2 and 3, W½NE¼NW¼ SE¼, NW¼SE¼NW¼SE¼;
Sec. 13, NE¼SW¼;
Sec. 23, SE¼NW¼;
Sec. 33, SW¼NW¼, W½SW¼, N½SE¼, SE¼SE¼.
Containing approximately 449.15 acres.
T. 1 S., R. 12 W. A portion of the surveyed township more particularly described as (protracted):
Secs. 2 to 4, inclusive, all;
Secs. 9 to 16, inclusive, all;
Secs. 21 to 29, inclusive, all;
Secs. 31 to 34, inclusive, all;
Sec. 35, excluding Native allotment AA-7792;
Sec. 36, all.
Containing approximately 16,485 acres.
T. 2 S., R. 12 W. A portion of the surveyed township more particularly described as (protracted):
Sec. 1, all;
Sec. 2, excluding Native allotment AA-6998 Parcel C;
Secs. 3 to 8, inclusive, all;
Sec. 9, excluding Native allotment AA-6996;
Sec. 10, excluding Native Allotment AA-6996;
Secs. 11 to 14, inclusive, all;
Sec. 15, excluding Native allotment AA-6995;
Sec. 16, excluding Native allotment AA-6995;
Secs. 17 and 18, all;
Sec. 19, excluding Tract C of Alaska State Land Survey 72-82 (State Patent No. 2120), Tract B of Alaska State Land Survey 72-82 (State Patent No. 2127), Tract A of Alaska State Land Survey 72-82 (State Patent No. 2273), Tract F of Alaska State Land Survey 72-41 (State Patent No. 2140), Tract E of Alaska State Land Survey 72-41 (State Patent No. 2064);
Sec. 20, all;
Sec. 30, excluding Tract E of Alaska State Land Survey 72-41 (State Patent No. 2064), Tract F of Alaska State Land Survey 72-41 (State Patent No. 2140), and Tract A of Alaska State Land Survey 73-67 (State Patent No. 2125);
Sec. 31, all.
Containing approximately 13,541 acres.
T. 3 S., R. 12 W. A portion of the surveyed township more particularly described as (protracted):
Secs. 6 to 9, inclusive, all;
Sec. 16, all;
Secs. 21 and 22, all;
Sec. 27, all;
Sec. 34, all.
Containing approximately 5,724 acres.
T. 1 S., R. 13 W., Surveyed.
Sec. 7, lots 1 and 2, SW¼NE¼;
Sec. 31, SE¼.
Containing approximately 310.77 acres.
T. 2 S., R. 13 W., Surveyed.
Sec. 6, lots 1, 2, 3, 4 and 5, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, excluding Native allotment AA-6998;
Sec. 7, NE¼, N½SE¼, SW¼SE¼, W½SE¼SE¼, W½E½SE¼SE¼;
Sec. 9, W½NE¼, SE¼NE¼, NW¼, N½SW¼, E½SE¼SW¼, SE¼;
Sec. 16, NE¼, E½NE¼NW¼, S½NW¼;
Sec. 17, W½NE¼, SE¼NE¼, NW¼.
Containing approximately 1,775.45 acres.
T. 2 S., R. 13 W. Those portions of Tract A more particularly described as (protracted):
Secs. 1 and 2, all;
Sec. 10, excluding Native allotment AA-6998 Parcel B;
Secs. 11 to 14, inclusive, all;
Sec. 15, excluding Native allotment AA-6998 Parcel B;
Secs. 16 and 17, S½;
Secs. 18 to 21, inclusive, all;
Sec. 22, excluding Native allotment AA-7055;
Sec. 23, all;
Sec. 24, excluding Tract A of Alaska State Land Survey 72-81 (State Patent No. 2115), Alaska State Land Survey No. 73-54 (State Patent No. 2094), Alaska State Land Survey No. 74-73 (State Patent No. 2429);
Sec. 25, excluding Alaska State Land Survey 73-54 (State Patent No. 2094), Alaska State Land Survey 74-73 (State Patent No. 2429) and Tract C of Alaska State Land Survey No. 72-40 (State Patent No. 2261);
Secs. 26 to 30, inclusive, all;
Sec. 36, all.
Containing approximately 14,433 acres.
T. 3 S., R. 13 W. A portion of the surveyed township more particularly described as (protracted):
Sec. 1, all;
Secs. 11 and 12, all;
Secs. 14 and 15, all;
Secs. 21 and 22, all;
Secs. 28 and 29, all;
Secs. 31 and 32, all.
Containing approximately 7,029 acres.
T. 1 S., R. 14 W., Surveyed.
Sec. 26, W½NW¼SW¼;
Sec. 34, E½NE¼SW¼.
Containing approximately 40 acres.
T. 2 S., R. 14 W., Surveyed.
Sec. 1, N½SW¼;
Sec. 10, E½SE¼, SW¼SE¼;
Sec. 12, E½SE¼;
Sec. 13, W½NW¼.
Containing approximately 360 acres.
T. 3 S., R. 14 W., Surveyed.
Sec. 5, SW¼NE¼, N½SE¼, SW¼SE¼;
Sec. 30, lot 2, E½NW¼.
Containing approximately 276.85 acres.
T. 3 S., R. 14 W. A portion of Tract A more particularly described as (protracted):
Secs. 22 to 28, inclusive, all;
Secs. 33 to 36, inclusive, all.
Containing approximately 7,040 acres.
T. 4 S., R. 14 W., Surveyed.
Sec. 21, NW¼;
Sec. 29, S½N¼;
Sec. 32, E½NE¼, E½W½NE¼, S½NW¼NW¼NE¼, SW¼NW¼NE¼, W½SW¼NE¼.
Containing approximately 475 acres.

This decision approves conveyance of approximately 70,659.22 acres to Ninilchik Natives Association, Inc. This includes approximately 68,097 acres properly selected by and tentatively approved in part to the State of Alaska, which does not exceed the 69,120 acres permitted under section 12(a)(1) of ANCSA.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, as prescribed and directed by the act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945;

2. A right-of-way thereon for the construction of railroads, telegraph and telephone lines, as prescribed and directed by the act of March 12, 1914, 38 Stat. 305; 43 U.S.C. 975d;

3. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613 (Supp. V, 1975));

4. A right-of-way, A-059620, for a Federal aid highway. Act of August 27, 1958 (72 Stat. 885; 23 U.S.C. 317);

5. Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616 (Supp. V, 1975)), the following public easements referenced by easement identification number (EIN) on the easement map in case file AA-6685-EE are reserved to the United States and subject to further regulation thereby:

a. (EIN 1 C4, D1) A continuous linear easement twenty-five (25) feet in width upland of and parallel to the mean high tide line in order to provide access to and along the marine coastline and use of such shore for purposes such as beaching of watercraft or aircraft, travel along the shore, recreation, and other similar uses. Deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction. This easement is subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route, at no cost to the United States, prior to the creation of such obstruction.

b. (EIN 4 D9, L) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks and an easement on the entire bed of the Ninilchik River throughout the selection area. Purpose is to provide for public use of waters having highly significant present recreatioal use.

c. (EIN 6 C5, D9) An easement sixty (60) feet in width for an existing road that crosses the selection area in a generally east-west direction from the Sterling Highway south of Ninilchik to public land and the U.S. Geological Survey seismic site for access to public lands and a Federal facility. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

d. (EIN 6a C5, D9) An easement for a proposed access trail twenty-five (25) feet in width from road easement No. 6 C5, D9 northerly to the Ninilchik River. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

e. (EIN 7 D9, L) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks and an easement on the entire bed of the main fork of Deep Creek throughout the selection area. Purpose is to provide for public use of waters having highly significant present recreational use.

f. (EIN 8 D9) An easement for an existing access trail fifty (50) feet in width from the Sterling Highway southeasterly crossing the selection area to public lands in sec. 2, T. 4 S., R. 12 W., Seward Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

g. (EIN 9 D9, L) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks and an easement on the entire bed of Stariski Creek through the selection area. Purpose is to provide for public use of waters having highly significant present recreational use.

h. (EIN 12 C7) A one hundred and sixty (160) acre easement for an existing U.S. Geological Survey (USGS) seismic station in sec. 35, T. 1 S., R. 12 W., Seward Meridian, for earthquake research purposes.

i. (EIN 13 D1) An easement one hundred (100) feet in width for a proposed road from road easement No. 6 C5, D9 in sec. 30, T. 2 S., R. 12 W., Seward Meridian, south and easterly to public lands for access to public lands. The usage of roads and trails will be controlled by applicable State or Federal Law or regulation.

j. (EIN 14 C) The right of the United States to enter upon the lands herein granted for cadastral, geodetic, or other survey purposes is reserved, together with the right to do all things necessary in connection therewith.

k. (EIN 15 C) Easements for the transportation of energy, fuel, and natural resources which are the property of the United States or which are intended for delivery to the United States or which are produced by the United States. These easements also include the right to build any related facilities necessary for the exercise of the right to transport energy, fuel, and natual resources, including those related facilities necessary during periods of planning, locating, constructing, operating, maintaining, or terminating transportation systems. The specific location of these easements shall be determined only after consultation with the owner of the servient estate. Whenever the use of such easements will require removal or relocation of any structure owned or authorized by the owner of the servient estate, such use shall not be initiated without the consent of the owner of such improvement; provided, however, that the United States may exercise the right of eminent domain if such consent is not given. Only those portions of these easements that are actually in use or that are expressly authorized on March 3, 1996, shall continue to be in force.

l. (EIN 16 E) An easement for an existing access trail fifty (50) feet in width from road easement No. 6 C5, D9 easterly along an existing seismic trail to public lands. The usage of roads and trails will be controlled by applicable State of Federal law or regulation.

m. (EIN 17 E) An easement for an existing access trail fifty (50) feet in width from public land in sec. 5, T. 3 S., R. 12 W., Seward Meridian, southwesterly along an existing seismic line to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

n. (EIN 18 E) An easement for an existing access trail fifty (50) feet in width from public lands in sec. 30, T. 3 S., R. 12 W., Seward Meridian, southwesterly along a seismic line to public lands in sec. 6, T. 4 S., R. 12 W., Seward Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

o. (EIN 19 C4) An easement one hundred (100) feet in width for an existing road through sec. 34, T. 1 S., R. 14 W., Seward Meridian. This road is known locally as the Sterling Highway. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978. Conformance is contingent upon resolution of the litigation *Calista, et al.* v. *Andrus* and implementation of the Secretary's new easement policy.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands

hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under section 6(g) of the Alaska Statehood Act (72 Stat. 339, 341; 48 U.S.C. 111719, 111720)), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him;

3. Requirements of section 14(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 703; 43 U.S.C. 1601, 1613 (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section;

4. The terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Cook Inlet Region, Inc., Ninilchik Natives Association, Inc. and other Cook Inlet village corporations. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the agreement is located in the Bureau of Land Management easement case file for Ninilchik Natives Association, Inc., serialized AA-6685-EE. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

5. The following third-party interests, if valid, created and identified by the State of Alaska, as provided by section 14(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(g) (Supp. V, 1975)):

a. Open-to-entry leases, including the right of the lessee to exercise the option to purchase the surface estate at a negotiated price under the provisions of A.S. 38.05.77:

1. ADL 41028 located in the NW¼NE¼ of section 30, T. 2 S., R. 12 W., Seward Meridian.

2. ADL 41072 located in the NW¼SW¼ of section 20, T. 2 S., R. 12 W., Seward Meridian.

3. ADL 41073 located in the NW¼SW¼ of section 20, T. 2 S., R. 12 W., Seward Meridian.

4. ADL 41074 located in the NW¼SW¼ of section 20, T. 2 S., R. 12 W., Seward Meridian.

5. ADL 41140 located in the NE¼SW¼ of section 20, T. 2 S., R. 12 W., Seward Meridian.

6. ADL 41146 located in the NW¼NE¼ of section 30, T. 2 S., R. 12 W., Seward Meridian.

7. ADL 44803 located in the SW¼SW¼ of section 24, T. 2 S., R. 13 W., Seward Meridian.

8. ADL 47755 located in the NE¼SW¼ of section 20, T. 2 S., R. 12 W., Seward Meridian.

9. ADL 49086 located in the NE¼SE¼ of section 19, T. 2 S., R. 12 W., Seward Meridian.

10. ADL 52829 located in the NW¼SW¼ of section 20, T. 2 S., R. 12 W., Seward Meridian.

11. ADL 53837 located in the SW¼SE¼ of section 20, T. 2 S., R. 13 W., Seward Meridian.

12. ADL 53838 located in the SE¼SE¼ of section 20, T. 2 S., R. 13 W., Seward Meridian.

13. ADL 55257 located in the NW¼SE¼ of section 20, T. 2 S., R. 12 W., Seward Meridian.

14. ADL 56033 located in the SE¼SE¼ of section 19 and the NE¼NE¼ of section 30, T. 2 S., R. 12 W., Seward Meridian.

b. Right-of-way Permits

1. ADL 29520 traversing selected lands in section 35 of T. 1 S., R. 12 W., Seward Meridian, sections 15, 22, 23, and 25 of T. 2 S., R. 13 W., Seward Meridian, and sections 2, 3, 10, 15, 16, 19, 20, 21 and 30 of T. 2 S., R. 12 W., Seward Meridian.

There are no inland water bodies considered to be navigable within the lands described.

Conveyance of the remaining entitlement to Ninilchik Natives Association, Inc., shall be made at a later date. When conveyance is granted to Ninilchik Natives Association, Inc. for the surface estate, conveyance of the subsurface estate of the lands described above shall be granted to Cook Inlet Region, Inc., pursuant to section 14(f) of ANCSA, and shall be subject to the same conditions as the surface conveyance.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the FEDERAL REGISTER and once a week, for four (4) consecutive weeks, in the Anchorage Times. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510, and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501; also:

1. Any party receiving service of this decision by mail shall have 30 days from the receipt of this decision to file and appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until May 8, 1978, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

4. If Ninilchik Natives Association, Inc., or Cook Inlet Region, Inc. objects to any easement which is identified herein for reservation in the conveyance which is subject to the discretion of the State Director and not reserved pursuant to an express Secretarial directive, a petition for reconsideration must be filed within 30 days with the State Director, Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510. A copy of the petition should be served upon the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. If a petition for reconsideration is not filed, it will be deemed that the right to contest any such easement has been waived.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of, and requirements for, filing an appeal may be obtained from the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

SUE A. WOLF,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-9133 Filed 4-5-78; 8:45 am]

[4310-84]

Bureau of Land Management

[ES 16542; ES 0629]

MICHIGAN

Proposed Withdrawal and Reservation of Lands

MARCH 30, 1978.

On January 14, 1974, the National Park Service, Department of the Interior, submitted a formal application, ES 16452, to withdraw South Manitou Island Light Station in Michigan for inclusion in the Sleeping Bear Dunes National Lakeshore. The 12.63-acre portion of Lot 1, section 10, T. 30 N., R. 15 W., Michigan Meridian, under consideration is presently withdrawn for use by the Coast Guard pursuant to the provisions of Executive Order dated June 14, 1839. However, that agency has filed a notice of intent to relinquish control and accountability of the subject lands, ES 0629. This transfer of jurisdiction is requested in accordance with the provisions of section 8(a) of the Act of October 21, 1970 (84 Stat. 1077) and section 204 of the Act of October 21, 1976 (90 Stat. 2751).

Pursuant to section 204(h) of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2754), notice is hereby given that an opportunity for public hearing is afforded in connection with the pending with-

drawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request with the undersigned officer of the Bureau of Land Management on or before May 15, 1978.

If a public hearing is scheduled, a notice will be published in the FEDERAL REGISTER giving the time and place of such hearing. All previous comments of record concerning the proposed withdrawal will be considered in making a final determination on the application. In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned officer of the Bureau of Land Management on or before May 15, 1978.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by the action of the Secretary of the Interior.

All communications in connection with this withdrawal should be addressed to the Director, Eastern States Office, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Md. 20910.

LOWELL J. UDY,
Director, Eastern States.

[FR Doc. 78-9071 Filed 4-5-78; 8:45 am]

[4310-84]

[W-62887]

WYOMING

Application

MARCH 28, 1978.

Notice is hereby given that pursuant to sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corp. of Salt Lake City, Utah, filed an application for a right-of-way to construct a 4½ inch O. D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 18 N., R. 92 W.,
Sec. 4, SE¼SE¼.

The proposed pipeline will transport natural gas from the Creston #1-3 well located in the NW¼SE¼ of Section 3, T. 18 N., R. 92 W., to a point of connection with Northwest Pipeline Corp. proposed Trunk "A" pipeline in the NW¼NE¼ of Section 9, T. 18 N., R. 92 W., Carbon County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyo. 82301.

GLENNA M. LANE,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-9072 Filed 4-5-78; 8:45 am]

[4310-84]

[W-62911]

WYOMING

Application

MARCH 28, 1978.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northern Gas Co. of Casper, Wyo., has filed an application for a right-of-way to construct a 3 inch pipeline and appurtenant facilities for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 22 N., R. 86 W.,
Sec. 26, SW¼NE¼, SE¼NW¼ and N½SW¼;
Sec. 34, N½NW¼.

The pipeline will transport natural gas from the Polumbus 26-1 well located in the SW¼NE¼ of section 26 southerly through sections 27 and 34 to a compressor station located within section 33.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyo. 82301.

GLENNA M. LANE,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-9073 Filed 4-5-78; 8:45 am]

[4310-31]

Geological Survey

NEW ENGLAND-MOTT, N. DAK.

Known Recoverable Coal Resource Area

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and section 8A of the Mineral Leasing Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, August 4, 1976), Federal lands within the State of North Dakota have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(34) NORTH DAKOTA

New England-Mott (North Dakota) Known Recoverable Coal Resource Area; July 15, 1977: 561,011 acres.

A diagram showing the boundaries of the area classified for leasing has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, MS 609, Box 25046, Federal Center, Denver, Colo. 80225.

Dated: March 27, 1978.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 78-9076 Filed 4-5-78; 8:45 am]

[4310-31]

LA VENTANA, N. MEX.

Known Recoverable Coal Resource Area

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and Section 8A of the Mineral Leasing Act of February 25, 1920, as added by Section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, August 4, 1976), Federal lands within the State of New Mexico have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(31) NEW MEXICO

La Ventana (New Mexico) Known Recoverable Coal Resource Area; April 21, 1977: 324,739 acres.

A diagram showing the boundaries of the area classified has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colo. 80225.

Dated: March 27, 1978.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 78-9074 Filed 4-5-78; 8:45 am]

[4310-31]

TSAYA, N. MEX.

Known Recoverable Coal Resource Area

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and Section 8A of the Mineral Leasing Act of February 25, 1920, as added by Section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, August 4, 1976). Federal lands within the State of New Mexico have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(31) NEW MEXICO

Tsaya (New Mexico) Known Recoverable Coal Resource Area; July 26, 1977; 85,508 acres.

A diagram showing the boundaries of the area classified has been filed with the appropriate land office in the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colo. 80225.

Dated: March 27, 1978.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 78-9075 Filed 4-5-78; 8:45 am]

[4310-31]

RED DESERT, WYO.

Known Recoverable Coal Resource Area

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and section 8A of the Mineral Leasing Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, August 4, 1976), Federal lands within the State of Wyoming have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(50) WYOMING

Red Desert (Wyoming) Known Recoverable Coal Resource Area (KRCRA); May 13, 1977; 790,980 acres.

A diagram showing the boundaries of the area classified has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colo. 80225.

Dated: March 27, 1978.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 78-9077 Filed 4-5-78; 8:45 am]

[4310-31]

ROCK SPRINGS, WYO., REVISION

Known Recoverable Coal Resource Area

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and section 8A of the Mineral Leasing Amendments Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, August 4, 1976), Federal lands within the State of Wyoming have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(50) WYOMING

Revised Rock Springs (Wyoming) Known Recoverable Coal Resource Area (KRCRA); June 8, 1977: 350,698 acres were added within the KRCRA. Total area now classified for leasing is 767,532 acres.

A diagram showing the revised boundary and acreage has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colo. 80225.

Dated: March 27, 1978.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 78-9078 Filed 4-5-78; 8:45 am]

[4410-18]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE; MODEL PRE-RELEASE PROGRAM

Solicitation

The National Institute of Law Enforcement and Criminal Justice announces a competitive research grant to conduct an evaluation of a model pre-release program in selected communities. This experimental study will be a coordinated effort within the National Institute, with the basic program's design and management conducted under its Office of Development Testing and Dissemination, and the evaluation's design and management conducted under its Office of Program Evaluation.

The major objectives of the experiment are to: (a) Test the implementation of a county-based, full-service, correctional pre-release program, (b) determine its cost-effectiveness, and (c) explore the model program's impacts on its clients, communities, and State and local criminal justice systems.

The solicitation asks for the submission of draft proposals. A formal application will be requested, following a peer review of the proposals as indicated in the solicitation. The total cost of the evaluation must not exceed $300,000; based on an estimated maximum number of three (3) test-sites, and a study duration of twenty-four (24) months. In order to be considered, all papers must be postmarked no later than June 10, 1978. The evaluation grant is expected to be awarded in September 1978, with actual startup date based on optimal phasing with the test projects. Because this is a research grant, agency policy prohibits profit-making organizations from receiving funding support for this evaluation.

Further information and copies of the full solicitation can be obtained by contacting Rosemary Murphy or Dr. Bernard A. Gropper, Office of Program Evaluation, NILECJ, 633 Indiana Avenue NW., Washington, D.C. 20531, 202-376-3824.

BLAIR G. EWING,
Acting Director, NILECJ.

[FR Doc. 78-9079 Filed 4-5-78; 8:45 am]

[4510-26]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

STANDARDS ADVISORY COMMITTEE ON CUTANEOUS HAZARDS

Meeting

Notice is hereby given that the Standards Advisory Committee on Cutaneous Hazards will meet on April 20 and 21 in Room C-2318 of the Department of Labor Building, Third Street and Constitution Avenue, NW., Washington, D.C.

The Standards Advisory Committee on Cutaneous Hazards was established under Section 7(b) of the Occupational Safety and Health Act of 1970 (Pub. L. 91-596) to assist the Secretary of Labor in his standards-setting function.

At the meeting the Committee will continue its discussion of strategies to employ for identifying, classifying and controlling cutaneous hazards. On both days, the meeting will begin at 9 a.m. The public is invited to attend.

For additional information contact: Stephen Kaffee, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3635, Washington, D.C. 20210, 202-523-8024.

Written data or views concerning these agenda items may be submitted to the Division of Consumer Affairs. Such documents which are received before the scheduled meeting dates, preferably with 20 copies, will be presented to the Committee and included in the official record of the proceedings.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the chairman of the Committee, to the extent which time permits.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, D.C. this 4th day of April 1978.

EULA BINGHAM,
Assistant Secretary, Occupational Safety and Health.

[FR Doc. 78-9313 Filed 4-5-78; 9:18 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-461-A]

ILLINOIS POWER CO.

Receipt of Additional Antitrust Information: Time for Submission of Views on Antitrust Matters

Illinois Power Co., pursuant to section 103 of the Atomic Energy Act of 1954, as amended, filed on January 31, 1978, an Application for Amendment to Construction Permit for the Clinton Power Station, Unit 1 which contained "Information Requested by the Attorney General for Antitrust Review" required by 10 CFR Part 50, Appendix L, as well as general and financial information required by 10 CFR 50.33. This information adds Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. as co-owners of the Clinton Power Station, Unit 1.

The information was filed by Illinois Power Co. in connection with their application for a construction permit and operating license for the Clinton Power Station, Unit 1, a boiling water reactor located on the Applicant's site in Harp Township, DeWitt County, Ill.

The original antitrust portion of the application was submitted for units 1 and 2 on October 26, 1973 and Notice of Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicant's Environmental Report; Time for Submission of Views on Antitrust Matters was published in the FEDERAL REGISTER on December 7, 1973 (38 FR 33788). The Notice of Hearing was published in the FEDERAL REGISTER on December 7, 1973 (38 FR 33789).

Copies of the above documents and other related material are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., 20555 and at the Local Public Document Room located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Ill., 61727. Information in connection with the antitrust review of this application can be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, attention: Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation.

Any person who wishes to have his views on the antitrust matters with respect to Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission on or before May 30, 1978.

Dated at Bethesda, Md. this second day of March 1978.

For the Nuclear Regulatory Commission.

D. ALLISON,
Acting Chief, Light Water Reactors Branch No. 1, Division of Project Management.

[FR Doc. 78-8492 Filed 3-29-78; 8:45 am]

[7590-01]

[Docket No. 50-317]

BALTIMORE GAS AND ELECTRIC CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 31 to Facility Operating License No. DPR-53, issued to Baltimore Gas & Electric Co. (the licensee), which revised Technical Specifications for operation of the Calvert Cliffs Nuclear Power Plant Unit No. 1 (the facility) located in Calvert County, Md. The amendment is effective as of its date of issuance.

The amendment changes the Technical Specifications to delete snubber numbers 1-41-10 and 1-41-11 associated with the charging portion of the Chemical and Volume Control System (CVCS).

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact appraisal statement, or negative declaration and environmental impact need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 3, 1978, and supplement dated March 9, 1978, (2) Amendment No. 31 to License No. DPR-53, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document room, 1717 H Street, NW., Washington, D.C., and at the Calvert County Library, Prince Frederick, Md. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 28th day of March 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-9112 Filed 4-5-78; 8:45 am]

[7590-01]

[Docket Nos. 50-514, 50-515]

PORTLAND GENERAL ELECTRIC CO., ET AL. (PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2)

Change of Schedule for Prehearing Conference

At the request of State and Intervenor representatives the schedule for the prehearing conference in this matter has been changed. The prehearing conference will be held on Wednesday, April 12, 1978, at 9 a.m., local time, in the following location:

Courtroom No. 2, The Pioneer Courthouse, 555 Southwest Yamhill, Portland, Oreg. 97204.

It is so ordered.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Md., this 30th day of March 1978.

JAMES R. YORE,
Chairman.

[FR Doc., 78-9113 Filed 4-5-78; 8:45 am]

[7590-01]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.28, Revision 1, "Quality Assurance Program Requirements (Design and Construction)," describes a method acceptable to the NRC staff for complying with the Commission's regulations with regard to overall quality assurance program requirements during design and construction of nuclear power plants. The guide endorses ANSI N45.2-1977, "Quality Assurance Program Requirements for Nuclear Facilities." This revision is the result of additional staff review.

Comments and suggestions in connection with: (1) items for inclusion in guides currently being developed, or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 1.28, Revision 1, will, however, be particularly useful in evaluating the need for an early revision if received by June 2, 1978.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accomodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

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

Dated at Rockville, Md., this 29th day of March 1978.

For the Nuclear Regulatory Commission.

RAY G. SMITH,
Acting Director, Office of Standards Development.

[FR Doc. 78-9123 Filed 4-5-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to section No. 9.5.3 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to section No. 9.5.3 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555.

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

Dated at Bethesda, Md., this 29th day of March 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-9118 Filed 4-5-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to section No. 10.3 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to section No. 10.3 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street, NW., Washington, D.C 20555.

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

Dated at Bethesda, Md., this 29th day of March 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-9119 Filed 4-5-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to section No. 8.2 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to section No. 8.2 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555.

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

Dated at Bethesda, Md., this 30th day of March 5, 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-9120 Filed 4-5-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to section No. 9.1.4 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to section No. 9.1.4 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555.

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

Dated at Bethesda, Md., this 29th day of March 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director Division of Systems Safety Office of Nuclear Reactor Regulation.

[FR Doc. 78-9121 Filed 4-5-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 9.5.4 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 9.5.4 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 (5 US.C. 552(a)).

Dated at Bethesda, Md., this 29th day of March 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-9122 Filed 4-5-78; 8:45 am]

[7590-01]

[Docket No. 50-244]

ROCHESTER GAS & ELECTRIC CORP.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 18 to Provisional Operating License No. DPR-18, issued to Rochester Gas & Electric Corp. (the licensee), which revised Technical Specifications for operation of the R. E. Ginna Plant (facility) located in Wayne County, N.Y. The amendment is effective as of its date of issuance.

The amendment modified the existing Ginna Technical Specifications to incorporate minimum qualifications for the Radiation Protection supervisor, in response to the NRC letter of March 9, 1977. The mimimum qualifications are more stringent than those of the previous specification and are those set forth in Regulatory Guide 1.8—"Personnel Selection and Training." The amendment also modified the Technical Specifications to provide alternatives to assure proper radiation monitoring while individuals are in high radiation areas.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated June 3, 1977, (2) Amendment No. 18 to License No. DPR-18, (3) the Commission's related Safety Evaluation, and (4) the Commission's letter to the licensee dated March 9, 1977. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Rochester Public Library, 115 South Avenue, Rochester, N.Y. 14627. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 31st of March 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-9114 Filed 4-5-78; 8:45 am]

[7590-01]

[Docket Nos. 50-259, 50-260, and 50-296]

TENNESSEE VALLEY AUTHORITY

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 37 to Facility Operating License No. DPR-33, Amendment No. 34 to Facility Operating License No. DPR-52, and Amendment No. 11 to Facility Operating License No. DPR-68 issued to Tennessee Valley Authority (the licensee), which revised Technical Specifications for operation of the Browns Ferry Nuclear Plant, Unit Nos. 1, 2, and 3 (the facility), located in Limestone County, Ala. The amendments are effective as of the date of issuance.

These amendments change the Technical Specifications to permit operation of the facility with a third offsite power source to augment the two existing 161 kV sources, while Unit No. 2 is shut down for refueling.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated March 22, 1978, (2) Amendment No. 37 to License No. DPR-33, Amendment No. 34 to License No. DPR-52, and Amendment No. 11 to License No. DPR-68, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Athens Public Library, South and Forrest, Athens, Ala. 35611. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 29th day of March 1978.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-9115 Filed 4-5-78; 8:45 am]

[7590-01]

[Docket Nos. 50-518/519/520/521]

TENNESSEE VALLEY AUTHORITY

Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission has relocated the Local Public Document Room for the Hartsville Nuclear Generating Station Units 1, 2, 3, and 4 from Hartsville, Tenn. to Nashville, Tenn. Members of the public may inspect documents and correspondence relating to the proposed Hartsville Nuclear Generating Station at the Tennessee State Library and Archives, 403 Seventh Avenue North, Nashville, Tenn. 37219. The hours of operation of the State Library and Archives are as follows: Monday through Friday 8 a.m. to 4:30 p.m. and Saturday 8 a.m. to 12 noon and 1 p.m. to 4:30 p.m. Units 1, 2, 3, and 4 of the Hartsville Nuclear Generating Station are to be constructed by the Tennessee Valley Authority in Trousdale County, Tenn.

Copies of documents and correspondence are also available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Dated at Bethesda, Md., this 30th day of March 1978.

For the Nuclear Regulatory Commission.

O. D. PARR,
Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc. 78-9116 Filed 4-5-78; 8:45 am]

[7590-01]

[Docket No. 50-301]

WISCONSIN ELECTRIC POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 38 to Facility Operating License No. DPR-27 issued to Wisconsin Electric Power Co., which revised Technical Specifications for operation of the Point Beach Nuclear Plant Unit No. 2, located in the town of Two Creeks, Manitowoc County, Wis. This amendment is effective as of the date of issuance.

This amendment consists of changes to the Technical Specifications to allow a one-time waiver of the requirement for monthly functional tests of the turbine stop and governor valves until the start of the fourth refueling outage.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need no be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 28, 1978, as supplemented March 8, 1978, (2) Amendment No. 38 to License No. DPR-27, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the University of Wisconsin, Stevens Point Library, Attention: Mr. Arthur M. Fish, Stevens Point, Wis. 54481. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 17th day of March 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-9117 Filed 4-5-78; 8:45 am]

[7590-01]

[Docket Nos. 50-582, 50-582A, 50-583 and 50-583A]

SAN DIEGO GAS & ELECTRIC CO., ET AL.[1]

Receipt of Additional Antitrust Information: Time for Submission of Views on Antitrust Matters

San Diego Gas & Electric Co., pursuant to section 103 of the Atomic Energy Act of 1954, as amended, filed on February 8, 1978, information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. This information concerns two additional prospective owners of the Sundesert Nuclear Plant, Units 1 and 2, the Los Angeles Department of Water and Power and the City of Burbank, Calif. The information was filed in connection with the San Diego Gas & Electric Co.'s application for construction permits for two pressurized water nuclear reactors designated as the Sundesert Nuclear Plant, Units 1 and 2. The proposed facilities are to be located on a site near Blythe in Riverside County, Calif.

The original antitrust portion of the application was submitted on October 29, 1975 and the Notice of Receipt of the Antitrust Application was published in the FEDERAL REGISTER on December 5, 1975 (40 FR 56985). The Notice of Hearing was published in the FEDERAL REGISTER on May 9, 1977 (42 FR 23569). A Notice of Receipt of Additional Antitrust Information concerning prospective owners, California Department of Water resources, Cities of Anaheim, Glendale, Pasadena and Riverside, California was published in the FEDERAL REGISTER on April 14, 1977 (42 FR 19535).

A copy of the above stated documents are avaliable for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, the San Diego County Law Library, 1105 Front Street, San Diego, Calif. 92101 and at the Palo Verde Valley District Library, 125 West Chanslorway, Blythe, Calif. 92255.

Any person who wishes to have his views on the antitrust matters with respect to the Los Angeles Department of Water & Power and the City of Burbank, Calif. presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, on or before May 15, 1978.

Dated at Bethesda, Maryland, this 9th day of March 1978.

For the Nuclear Regulatory Commission.

OLAN D. PARR,
Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc. 78-6834 Filed 3-15-78; 8:45 am]

[1] Los Angeles Department of Water and Power, City of Burbank, Calif., California Department of Water Resources, City of Anaheim, Calif., City of Glendale, Calif., City of Pasadena, Calif. and City of Riverside, Calif. and City of Riverside, Calif.

[4910-58]

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 78-14]

ACCIDENT REPORT; SPECIAL INVESTIGATION REPORT

Availability

The National Transportation Safety Board last week made available to the public printed copies of the following reports:

Highway Accident Report: Tractor-Semitrailer/Schoolbus Collision and Overturn, Rustburg, Virginia, March 8, 1977 (Report No. NTSB-HAR-78-1.— A southbound tractor-semitrailer struck the rear of a stopped schoolbus on U.S. Route 29 near Rustburg, Va. Three of the 33 occupants of the schoolbus died; the other occupants, including the busdriver, sustained injuries ranging from bruises to fractures, and the truckdriver sustained chest injuries.

The National Transportation Safety Board determines that the probable cause of the accident was the failure of the truckdriver, due to inattention and carelessness, to perceive and avoid the stopped schoolbus. Contributing to the accident was the stopping of the schoolbus in the traveled way of the high-speed highway, a practice of the Commonwealth of Virginia which was contrary to the provisions of Federal Highway Safety Program Standard No. 17. Contributing to the fatalities and injuries was the lack of occupant restraints in the schoolbus which allowed one occupant to be ejected, resulting in fatal injuries, and others to be propelled into sharp or unyielding interior components.

As a result of the investigation of this accident, the Safety Board made recommendations to the Virginia State Board of Education (H-78-6 and 7), to the National Highway Traffic Safety Administration (H-78-8 through 11),

to the Bureau of Motor Carrier Safety of the Federal Highway Administration (H-78-12 and 13), and to the State of North Carolina (H-78-14), all of which have been noticed previously in the FEDERAL REGISTER.

Special Investigation Report—An Overview of a Bulk Gasoline Delivery Fire and Explosion (Report No. NTSB-HZM-78-1).—This special investigation examined safeguards against fire and explosions during gasoline deliveries at service stations with aboveground storage tanks. The investigation included a critical review of a serious fire and explosion which killed 3 firemen, injured 28 persons, and caused losses of $4,000,000 near Gadsden, Ala. Principal factors discussed are the effect of unimplemented safety codes, and maintenance or misuse of safety features on equipment being used to deliver gasoline at service stations.

Based on its special investigation and findings, the Safety Board made recommendations to the Fire Marshals Association of North America (I-78-2 through 4), to the American Association of Motor Vehicle Administrators (I-78-5), and to the Underwriters Laboratories, Inc. (I-78-6 and 7), all of which have been noticed previously in the FEDERAL REGISTER.

NOTE.—Single copies of accident reports may be obtained from the Safety Board without charge; multiple copies may be purchased by mail from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

All requests to the Board for copies must be in writing, identified by report number and the date of publication of this notice in the FEDERAL REGISTER. Address requests to: Public Inquires Section, National Transportation Safety Board, Washington, D.C. 20594.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2169, 2171 (49 U.S.C. 1903, 1906)))

BARBARA BUSH,
Acting Federal Register Liaison Officer.

APRIL 3, 1978.

[FR Doc. 78-9138 Filed 4-5-78; 8:45 am]

[6820-27]

OFFICE OF THE FEDERAL REGISTER

REGULATIONS DRAFTING WORKSHOPS REVISED SCHEDULE

May and June 1978

To meet the increased demand for training since the signing of Executive Order 12044, Improving Government Regulations, the Office of the Federal Register is adding two Regulations Drafting Workshops to the present schedule.

Each Workshop covers the following material:

1. Drafting conventions, preferred usage, the rule of consistency.
2. Drafting exercises—proposed and final rules and preambles.
3. Review techniques that improve your work.
4. What you can do to make regulations easier to read and to use.

The aim of the workshop is to improve the quality of Federal regulations by teaching you how to design and draft clear documents.

WHO: Any Federal employee who drafts documents or who reviews documents for substance that are published in the FEDERAL REGISTER.

WHEN: The two additional workshops will be held as follows: May 8, 9, 10, 11, 1978, for people who are new to the Federal Government or to the rulemaking process, and June 12, 13, 14, 15, 1978, for people who are familiar with the rulemaking process.

WHERE: 1100 L Street NW., Room 9407, Washington, D.C.

COST: $150 for each person. Send a Form 170 or the training authorization form used by your office to: Special Projects Unit, Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408.

HOW: Each participant must call the Office of the Federal Register 202-523-4534 to make a reservation in addition to completing the training form.

FOR MORE INFORMATION: Write: Special Projects Unit, Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408, or phone 202-523-4534.

Dated: April 4, 1978.

FRED J. EMERY,
Director of the Federal Register.

[FR Doc. 78-9275 Filed 4-5-78; 8:45 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on March 30, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or 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 listmay be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration, Atlantic Bluefin Tuna Log Book, Monthly, 14,680 sportsmen, fishermen, Clearance Office, 395-3772.

Maritime Administration, Shipbuilding Orderbook and Shipyard Employment, MA-832, quarterly, 120 U.S. commercial shipyards, C. Louis Kincannon, Office of Federal Statistical Policy and Standards, 395-3211.

Industry and Trade Administration, Ethylene, ITA-9013, single time, 41 producers of ethylene, C. Louis Kincannon, 395-3211.

DEPARTMENT OF LABOR

Employment and Training Administration, Counselor Questionnaire, ETA-61, single time, 3000 local employment service—supervising counseling function, Strasser, A., 395-6132.

REVISIONS

DEPARTMENT OF LABOR

Employment and Training Administration, Report of Significant Layoff, ETA-235, on occasion, Manufacturer's trade estab. DOD. bases and Gov't facilities, 6,000 responses, 4,500 hours, Office of Federal Statistical Policy and Standards, 673-7959.

EXTENSIONS

NATIONAL CREDIT UNION ADMINISTRATION

Loans made, NCUA 5305, monthly, Federal Credit Unions, 1,900 responses, 1,900 hours, C. Louis Kincannon, 395-3211.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit:
Application for Approval Mortgagee, FHA 2001 C, on occasion, 600 responses, 900 hours, Caywood, D. P., 395-3443.
Mobile Home Dealer Application, FH-13(MH), on occasion, 1,000 responses, 500 hours, Caywood, D. P., 395-3443.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-9139 Filed 4-5-78; 8:45 am]

[3110-01]

PRIVACY ACT

New or Revised System of Records

The purpose of this notice is to list reports on new systems filed with the

Office of Management and Budget to give members of the public the opportunity to make inquiries about them and to comment on them.

The Privacy Act of 1974 requires the agencies to give advance notice to the Congress and the Office of Management and Budget of their intent to establish or modify systems of records subject to the Act (5 U.S.C. 552a(o)). During the period February 20, 1978 through March 3, 1978, the Office of Management and Budget received the following reports on new (or revised) systems of records.

DEPARTMENT OF THE INTERIOR

System name: Employment and Financial Interest Statements-States and Other Federal Agencies.
Report Date: March 10, 1978.
Point-of-Contact: Warren Dahlstrom, Departmental Privacy Act Officer, Department of the Interior, Washington, D.C. 20240.
Summary: This proposed system is intended "to review the employment and financial interests of persons performing any function or duty under the Surface Mining Control and Reclamation Act of 1977 in order to determine compliance with the conflict of interest provisions of the Act."

DEPARTMENT OF DEFENSE

System Name: Army Reserve Officers' Training Corps (ROTC) Leads Referral Card System.
Report Date: March 2, 1978.
Point-of-Contact: Mr. William Cavaney, Executive Secretary, Defense Privacy Board, 1000 Independence Avenue SW., Washington, D.C. 20314.
Summary: This system will be used to recruit and provide information to potental ROTC cadets and to provide management information reports used in evaluating the senior ROTC advertising program.
System Name: Officer Master File Automated System; Enlisted Master File Automated System.
Report Date: March 10, 1978.
Point-of-Contact: Mr. William Cavaney, Executive Secretary, Defense Privacy Board, 1000 Independence Avenue SW., Washington, D.C. 20314.
Summary: The Navy Department proposes to alter these two systems by adding additional computer terminals, so that management, distribution, and placement personnel can more quickly respond to requests for service related information.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

System Name: Medicare Second Surgical Opinion Experiments.
Report Date: March 3, 1978.
Point-of-Contact: Acting Associate Administrator for Policy, Planning and Research, Switzer Building, Room 5046, 330 C Street SW., Washington, D.C. 20201.
Summary: The purpose of this system is "to evaluate the impact of second surgical opinion programs on total medicare program costs, surgery rates, consumer and provider decisionmaking regarding surgery, and the health outcomes . . . of beneficiaries who use and do not use the experimental second/third opinion benefit."

U.S. POSTAL SERVICE

System Names: (1) National Labor Relations Board Administrative Litigation Case Files; (2) Labor Law Topic Files; (3) Equal Employment Opportunity—EEO Administrative Litigation Case files; (4) Personnel Records—Supervisor's Personnel Records; (5) Personnel Records—Arbitration Case Files; (6) Personnel Records—Adverse Action Appeals (Administrative Litigation Case Files); (7) Personnel Records—Garnishment Case Files; (8) Labor Law Civil Action—Civil Action Case Files; (9) Non-Mail Monetary Claims—Monetary Claims Involving Present or Former Employee (Case Files); (10) Inquiries and Complaints—Government Officials' Inquiry System.
Report Date: March 14, 1978.
Point-of-Contact: Mr. John E. Finlay, USPS Records Officer, Washington, D.C. 20260.
Summary: The NLRB Administrative Case File system is proposed for "providing legal advice to postal management • • • and for preparing documents for proper legal representation of the Postal Service's interests" in cases brought by or against the USPS before the National Labor Relations Board. (2) Labor Law Topic Files will contain information on USPS—related labor law matters; it will be used as a reference in providing legal advice and representation to USPS management. (3), (5)–(9) The USPS proposes to establish a "common, automated index for the indentification of pending and closed files" for these six systems of records. (4) It is proposed to automate a portion of this system to enhance its usefulness as a management tool. (10) Partial automation is also proposed for this system, so that postal management can "obtain instantaneous status information on any outstanding inquiry • • • made by government officials on behalf of the public."

NATIONAL SCIENCE FOUNDATION

System Name: Sample of U.S. Scientists who Published Research Papers During 1978.
Report Date: March 8, 1978.
Point-of-Contact: Mr. Herman G. Fleming, NSF Privacy Act Officer, National Science Foundation, Washington, D.C. 20550.
Summary: This system is the survey portion of a study of how scientists evaluate scientific and technical journals.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc. 78-9095 Filed 4-5-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 10184; 811-1250; 811-771]

ADMIRALTY INVESTMENT PLANS FOR THE ACCUMULATION OF SHARES OF ADMIRALTY FUND

Filing of Application Pursuant to Section 8(f) of the Act for an Order Declaring That Companies Have Ceased to be Investment Companies

MARCH 29, 1978.

In the matter of Admiralty Investment Plans for the Accumulation of Shares of Admiralty Fund, Insurance Series and Admiralty Investment Plans for the Accumulation of Shares of Admiralty Fund, Growth Series, 1 New York Plaza, New York, N.Y. 10004.

Notice is hereby given, That Admiralty Investment Plans for the Accumulation of Shares of Admiralty Fund, Insurance Series, and Admiralty Investment Plans for the Accumulation of Shares of Admiralty Fund, Growth Series (collectively referred to as "Applicants"), registered under the Investment Company Act of 1940 (the "Act") as unit investment trusts, by Oppenheimer Management Co. ("OMC") and the Bank of California, N.A. (the "Bank"), their interim sponsor and interim custodian, respectively, filed an application on May 19, 1977, and an amendment thereto on November 14, 1977, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicants have ceased to be investment companies as defined in the Act. 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.

Subsidiaries of The Seaboard Corp. ("TSC") formerly served as the investment adviser and principal underwriter for the Admiralty Fund ("Admiralty"), the underlying registered investment company in which the Applicants invested. On March 5, 1974, the Commission filed a complaint in the United States Dictrict Court for the Central District of California against TSC and other defendants. The complaint alleged numerous violations of the Federal securities laws including violations of the Act. Pursuant to a stipulation between the Commission, Admiralty, and other defendants, the Court entered an order on October 1, 1974, dismissing the Commission's complaint. As a result of the Commission's action against TSC, the independent directors of Admiralty terminated the contracts with Admiralty's adviser and underwriter.

In January, 1975, the Board of Directors of Admiralty suspended the

sale of shares of Applicants and no investments in such shares have been made subsequent to that date. Effective December 7, 1976, Admiralty merged with and into Oppenheimer A.I.M. Fund, Inc. ("A.I.M."). As a result of this merger, shares of Admiralty held in the accounts of planholders of Applicants were replaced with shares in A.I.M. of an equivalent value.

Prior to the merger, litigation based on the violations alleged in the Commission's complaint and certain additional claims against TSC and other parties was commenced on Admiralty's behalf. The Board of Directors of Admiralty and of A.I.M. believed it was inappropriate for A.I.M. shareholders to have either the burden or the possible benefits of the litigation in which Admiralty was involved. Therefore, the claims of Admiralty in the litigation were transferred to a Litigation Trust ("Trust") together with cash to support the prosecution of the claims. An order of the Commission (Investment Company Act Release No. 9543) under section 6(c) of the Act exempting the Trust from all provisions of the Act and rules and regulations thereunder other than sections 9, 17, 31, 34, 36, and 37 and related rules was issued on November 29, 1976.

The Beneficiaries (the "Beneficiaries") of the Trust are the prior shareholders of Admiralty and Applicants. The Trust assets shall be distributed to the Beneficiaries on the basis of each beneficiary's beneficial interest in the Trust in such manner and at such time as the Trustees shall deem necessary or appropriate; provided, however, that a final distribution of all remaining Trust assets shall be made promptly after the determination or settlement of all the litigation.

An application was filed with the Commission on July 13, 1976, requesting an order under section 11(a) of the Act approving an offer of exchange to be made to planholders of Applicants by OMC as sponsor and depositor of the Capital Accumulation Program of Shares of Oppenheimer A.I.M. Fund ("AIMCAP"). The application also requested, pursuant to section 6(c) of the Act, certain exemptions from the provisions of sections 22(d), 27(d), 27(e), and 27(f) of the Act.

The exchange offer contemplated that each planholder of Applicants would be given an opportunity to convert his plan to a plan issued by AIMCAP. At the same time the planholder would be advised that the plans issued by Applicants were being terminated and that each planholder could elect to (1) accept the exchange offer; (2) receive the appropriate number of shares of A.I.M. allocated to his plan (plus all uninvested cash which may have been paid since January, 1975); or (3) receive the cash redemption value of his account with Applicants. A planholder electing to exchange his plan for an AIMCAP plan would have the number of shares of A.I.M. credited to his account with Applicants transferred to an AIMCAP plan. Any uninvested cash which may have been paid since January, 1975, less custodian fees and sales charges attributable thereto, would be invested in AIMCAP and an AIMCAP Plan certificate would be issued under which the planholder would have been considered to have made the same number of payments under the AIMCAP Plan as had been made by him under his plan with Applicants. Thereafter, all monthly payments, fees and charges payable to the custodian and/or sponsor of the AIMCAP Plan would be in accordance with the provisions of the AIMCAP Plan.

On February 23, 1977, the Commission issued an order (Investment Company Act Release No. 9653) approving the proposed offer of exchange and granting the exemptions requested by the application. The exchange offer was thereafter made and all of Applicants' planholders have elected to either (1) exchange their plans for a plan issued by AIMCAP; (2) receive the shares of A.I.M. credited to their plans or (3) redeem their plans. All of the transactions required to carry out the election of all planholders of Applicants have been consummated. Therefore, Applicants currently have no asssets and no planholders.

Section 8(f) of the Act provides, in part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given, That any interested person may, not later than April 24, 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 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 promulagated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-9048 Filed 4-5-78; 8:45 am]

[8010-01]

[Release No. 14619; SR-Amex-77-38]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

MARCH 30, 1978.

On December 16, 1977, the American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, New York 10006, filed with the Commission, pursuant to section 19(b) of the Securities Acts Amendments of 1975, and rule 19b-4 thereunder, copies of a proposed rule change. This proposal would permit priority for spread and straddle orders (over other types of orders) that cannot be executed by accepting the current bid and offer, or either of them. By this proposal spread and straddle orders will have priority over either the current bid or the current offer, but not both. According to the Amex, the purpose of this rule change is to facilitate the execution of spread transactions under certain controlled conditions where such transactions would otherwise be difficult to effect.

The Chicago Board Options Exchange ("CBOE"), Pacific Stock Exchange ("PSE") and Midwest Stock Exchange ("MSE") presently permit spread or straddle orders to take priority over either the best bid or the best offer in the market.[1] However, the distinction between the systems of order priority on CBOE, PSE, and MSE on the one hand and the system of order priority on Amex on the other hand should be noted. CBOE, PSE, and MSE each have a limit order book in which only public customer limit orders may be placed. On these exchanges the limit order book has priority over other orders in the trading crowd, including spread and straddle orders. However, on Amex there does not exist a public customer limit order book which gains priority over other orders in the crowd.

Execution of spread and straddle orders on Amex nevertheless appears to be difficult, and appears, at this time, to warrant a special exception to the rules of priority similar to those of the exchanges mentioned above. It

[1] CBOE Rule 6.45(d); PSE Rule VI, Section 49, Commentary .02; MSE Article XLIV, Rule 6, Interpretation .02.

should be noted, however, that the Commission is currently conducting a study and investigation of the options markets, and based upon the results of that study, it may be necessary in the future for the Commission to take a different position respecting the policies of all options exchanges regarding spread and straddle order priority.

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. 14319, (December 29, 1977) and by publication in the FEDERAL REGISTER (43 FR 1163 January 6, 1978)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on December 16, 1977, 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. 78-9050 Filed 4-5-78; 8:45 am]

[8010-01]

[Release No. 14621; SR-Amex-78-3]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

MARCH 30, 1978.

On January 17, 1978, the American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, N.Y. 10006, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which permits Amex members to accept orders for the sale (writing) of call options from an affiliate of the issuer of the underlying stock. The rule change also permits Amex members to accept "restricted stock" or stock held by or for the account of an affiliate, or stock subject to the resale provisions of Rule 145(d) of the Securities Act of 1933 (the "Securities Act"), for the purpose of covering a short position in call option contracts and for the purpose of satisfying exercise notices of options positions. Such activity is permitted, however, only where the holder of the securities has complied with all applicable provisions of the Securities Act and the rules thereunder concerning the offer or sale of such securities.

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. 34-14435, February 2, 1978) and by publication in the FEDERAL REGISTER (43 FR 6181, February 13, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

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.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, That the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-9051 Filed 4-5-78; 8:45 am]

[8010-01]

[File No. 24LA-0036]

MAJOR RESOURCES, INC.

Order Vacating Temporary Suspension Order

MARCH 27, 1978.

Major Resources, Inc. (Major), 9700 Gandy Boulevard, Suite 311, St. Petersburg, Fla. 33702, having filed on April 29, 1977 a Notification pursuant to Regulation A of the General Rules and Regulations under the Securities Act of 1933, as amended, with respect to a proposed public offering of securities as specified in said filing; and

On October 4, 1977, the Commission, having issued a Temporary Suspension Order and Notice of Opportunity for Hearing in connection with said Notification on the grounds that Major had failed to disclose that Robert C. Miller, a promoter, officer, director and principal shareholder was the subject of an injunction involving violations of state securities laws; and

It having been determined that Robert C. Miller has died since the commencement of this proceeding, and none of the securities covered by the Notification have been offered or sold to the public;

Major Resources, Inc. and Laurent Walter Belanger, its president, submitted an Offer of Settlement on February 23, 1978 to the Commission whereby the Notification which it had filed with the Commission would be withdrawn upon the vacating of the temporary order of suspension by the Commission; and

The Commission has determined to accept this Offer of Settlement;

Therefore it is ordered, pursuant to Rule 261 of the general rules and regulations promulgated by the Commission under the Securities Act of 1933, as amended, That the Temporary Order of Suspension with respect to Major Resources, Inc. be vacated.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-9052 Filed 4-5-78; 8:45 am]

[8010-01]

[Release No. 20475; 70-6137]

NATIONAL FUEL GAS CO., ET AL.

Proposed Issuance and Sale of Short-Term Notes to Banks by Holding Company and Related Short-Term Notes to Holding Company by Subsidiaries

MARCH 30, 1978.

In the matter of National Fuel Gas Co., 30 Rockefeller Plaza, New York, N.Y. 10020, National Fuel Gas Distribution Corp., 10 Lafayette Square, Buffalo, N.Y. 14203, and National Fuel Gas Supply Corp., 308 Seneca Street, Oil City, Pa. 16301.

Notice is hereby given, That National Fuel Gas Co. ("National"), a registered holding company, and two of its wholly-owned subsidiary companies, National Fuel Gas Distribution Corp. ("Distribution Corp.") and National Fuel Gas Supply Corp. ("Supply Corp.") have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Act and Rules 42, 43, and 45 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

National proposes to issue and sell from time to time through December 29, 1978, up to $22,000,000 aggregate principal amount at any one time outstanding of its short-term unsecured notes to The Chase Manhattan Bank, N.A. ("Chase") and to loan the proceeds therefrom to Distribution Corp. Such borrowings from Chase are subject to the condition that the total borrowings by National in connection with this transaction together with

the funds loaned by Supply Corporation to Distribution Corp. pursuant to HCAR No. 20440 (March 9, 1978) will not at any one time exceed $22,000,000. The short-term unsecured notes issued to Chase will be dated as of the date of issue, will mature not later than twelve months from the date thereof, will be prepayable at any time without premium, and will bear interest based on the Chase prime rate as it fluctuates from time to time. National has informally agreed with Chase to maintain average balances of 20 percent of the average loans outstanding; however, the average balances maintained for normal operating needs are sufficient to cover these amounts. Assuming an average balance of 20 percent were required, the effective cost of money, based on an 8 percent prime rate, would be 10 percent. There will be no commitment fee or any closing or related costs in connection with the notes to Chase.

National proposes to use the proceeds from the sale of said short-term notes to acquire for cash from time to time up to $22,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes from Distribution Corp. Each such note will be dated the same date and bear the same effective interest rate as the related short-term note of National and will mature within twelve months from its date if issue, with interest payable quarterly until the principal amount is paid in full. Distribution Corp. will have the option, after payment of all notes of prior maturity, to prepay any note issued pursuant to this transaction at any time or from time to time, in whole or in part, without premium. Distribution Corp. proposes to use the proceeds from the sale of its notes for working capital and construction.

National also intends to establish lines of credit with various banks aggregating $40,000,000 and proposes to issue and sell from time to time through December 29, 1978, short-term unsecured notes pursuant thereto up to an aggregate principal amount at any one time outstanding of $40,000,000 and loan the proceeds therefrom to Supply Corp. The names of the banks and the maximum amount to be borrowed and outstanding at any one time from each such bank are as follows:

Buffalo Group:	
Marine Midland Bank-Western, Buffalo, N.Y.	$17,000,000
Manufacturers & Traders Trust Co., Buffalo, N.Y.	7,000,000
Liberty National Bank & Trust Co., Buffalo, N.Y.	1,000,000
The Chase Manhattan Bank, N.A., Buffalo, N.Y.	1,500,000
Manufacturers Hanover Trust Co., Buffalo, N.Y.	1,500,000
Erie Group:	
First National Bank of Pennsylvania, Erie, Pa.	2,500,000
Marine National Bank, Erie, Pa.	1,250,000
Warren National Bank, Warren, Pa.	1,000,000
Oil City Group:	
First Seneca Bank & Trust Co., Oil City, Pa.	2,250,000
Pennsylvania Bank & Trust Co., Titusville, Pa.	2,400,000
Northwest Pennsylvania Bank & Trust Co., Oil City, Pa.	1,500,000
McDowell National Bank, Sharon, Pa.	1,100,000
Total	40,000,000

The proposed notes will be dated the date of issue, will mature not later than twelve months from the date thereof, and will be prepayable at any time, in whole or in part, without penalty or premium. The notes issued and sold to the Erie and Oil City banks will bear interest at the prime rate of interest in effect from time to time of The Chase Manhattan Bank, N.A., New York City. The notes to be issued and sold to the Buffalo banks will bear interest at the prime rate of interest in effect from time to time of each individual bank. There will be no commitment fee or any closing or related costs in connection with these borrowings.

National proposes to use the proceeds from the sale of said notes to acquire for cash from time to time up to $40,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes issued by Supply Corp. Each note of Supply Corp. will be dated the date and bear the effective interest rate of the related short-term note of National. Each note will mature within twelve months from its date of issue, with interest payable monthly until the principal amount is paid in full. Supply Corp. will have the option to prepay any such note at any time or from time to time, in whole or in part, without penalty or premium. Supply Corp. proposes to use the proceeds from the sale of its notes for working capital and to purchase gas placed in storage during the summer months. Repayment of these notes by Supply Corp. will be made as gas is withdrawn from storage and sold and from funds generated internally.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $6,600, including legal fees of $4,500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. National requests that it be permitted to file the certificates required by Rule 24 relating to the proposed transactions on a quarterly basis.

Notice is further given, That any interested person may, not later than April 24, 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 the filing 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, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-9049 Filed 4-5-78; 8:45 am]

[4710-01]

DEPARTMENT OF STATE

[Public Notice 60]

CONSERVATION OF ANTARTIC LIVING MARINE RESOURCES

Extension of Comment Period

The period for comments on the Draft Environmental Impact Statement for a Possible Regime for Conservation of Antarctic Living Marine Resources has been extended until April 14, 1978. The availability of the draft statement was announced in the Federal Register on February 2, 1978 (Public Notice No. 589, 43 FR 4475).

Copies of the draft environmental impact statement may be obtained from, and comments should be submitted to, William H. Mansfield III, Office of Environmental Affairs, Department of State, Room 7820, Washington, D.C. 20520.

For the Secretary of State.

DONALD R. KING,
Acting Deputy Assistant Secretary, Environment and Population Affairs.

MARCH 29, 1978.

[FR Doc. 78-9080 Filed 4-5-78; 8:45 am]

[4710-01]

[Public Notice 602]

CULTURALLY SIGNIFICANT OBJECTS FROM ROMANIA

Determination

Notice is hereby given of the following determination:

Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985), Executive Order 11312 of October 14, 1966 (31 FR 13415, October 18, 1966) and delegation of authority No. 113 of December 23, 1966 (32 FR 58, January 5, 1967), I hereby determine that (1) the 53 objects described in the list [1] filed as a part of this determination imported from Romania pursuant to an agreement of January 29, 1977, between the Government of the United States of America and the Government of the Socialist Republic of Romania, for temporary exhibition without profit within the United States are of cultural significance and that (2) the temporary exhibition or display of such objects entitled "Romanian Contemporary Painting" at the Kenneth C. Beck Center for the Cultural Arts, Lakewood, Ohio, beginning on or about March 19, 1978, to on or about April 16, 1978; at Marquette University, Milwaukee, Wis., beginning on or about May 15, 1978, to on or about June 15, 1978; and at California State University, Fresno, Calif., beginning on or about June 25, 1978, to on or about July 25, 1978, is in the national interest.

Public notice of this determination is ordered to be published in the FEDERAL REGISTER.

ALICE S. ILCHMAN,
Assistant Secretary for Educational and Cultural Affairs.

MARCH 31, 1978.

[FR Doc. 78-9064 Filed 4-5-78; 8:45 am]

[4710-01]

[Public Notice 601]

CULTURALLY SIGNIFICANT WORKS OF ART

Extension of Tutankhamun Exhibition Within United States

Pursuant to the authority vested in me by Pub. L. 89-259 of October 19, 1965 (79 Stat. 985), Executive Order 11312 of October 14, 1966 (31 FR 13415, October 18, 1966) and Delegation of Authority No. 113 of December 23, 1966 (32 FR 58, January 5, 1967), Public Notice No. 495, published in the FEDERAL REGISTER on September 7, 1976 (41 FR 37609), is amended by adding to the places of exhibition or display: Fine Arts Museums of San Francisco, San Francisco, Calif., on or about June 1, 1979, to on or about September 30, 1979. This additional exhibition is pursuant to an agreement of March 11, 1978, between the Egyptian authorities and Mr. Ian M. White, Director of the Fine Arts Museums.

Notice of this amendment of the determination is ordered to be published in the FEDERAL REGISTER.

ALICE S. ILCHMAN,
Assistant Secretary for Educational and Cultural Affairs.

MARCH 30, 1978.

[FR Doc. 78-9063 Filed 4-5-78; 8:45 am]

[1] Itemized list of objects included in the Exhibition "Romanian Contemporary Painting."

[8120-01]

TENNESSEE VALLEY AUTHORITY

500-kV TRANSMISSION LINE AND SUBSTATION

Public Hearing

The Tennessee Valley Authority will conduct public hearings April 11 in the Municipal Building in Russellville, Ala.; April 13 in the Community Center in New Albany, Miss.; and April 14 in the Chickasaw Electric Cooperative Building in Somerville, Tenn., concerning the agency's plans to build a new 500-kilovolt substation in Union County, Miss., and a 500-kV transmission line that will extend 200 miles across southwest Tennessee, northeast Mississippi, and north Alabama. All three hearings will begin at 7 p.m. c.s.t.

A draft environmental statement on the proposed Cordova-Union-Browns Ferry Transmission Line was issued in March. The notice of availability of the draft statement was published in the FEDERAL REGISTER on March 17, 1978 (43 FR 11262). Copies of the statement are available from the TVA Information Office, 400 Commerce Avenue, Knoxville, Tenn. 37902. The statement is also available for inspection at the Fayette County Library, Somerville, Tenn.; the Jennie Stephens Smith Library, New Albany, Miss.; the Lee County Library, Tupelo, Miss.; the Russellville Public Library, Russellville, Ala.; and the TVA District Offices in Muscle Shoals, Ala.; Tupelo, Miss.; and Jackson, Tenn.

The 500-kV transmission line will extend from the Browns Ferry Nuclear Plant in north Alabama to the proposed Union, Miss., 500-kV substation site near Sherman, Miss., about 12 miles southeast of New Albany, and to the Cordova 500-kV substation near Memphis, Tenn. The new facilities are needed to meet future power requirements of TVA customers.

The public is invited to attend and comment on TVA's plans. A record will be made of the hearing, and comments made will be responded to in the final environmental statement. In addition, the record of the proceeding will be held open through May 1, 1978. All written statements submitted to the following address on or before May 1, 1978, will be included in the record: Herbert S. Sanger, Jr., General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, Knoxville, Tenn. 37902.

Dated: March 30, 1978.

LYNN SEEBER,
General Manager.

[FR Doc. 78-9127 Filed 4-5-78; 8:45 am]

[4910-22]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

NATIONAL ADVISORY COMMITTEE ON UNIFORM TRAFFIC CONTROL DEVICES

Solicitation of Public Views

The National Advisory Committee on Uniform Traffic Control Devices reviews currently approved standards, guides and warrants for traffic control devices including traffic signs, markings and signals as contained in the Manual on Uniform Traffic Control Devices. They recommend revisions of such standards and guides, propose new ones to meet new developments and improvements and provide advice to the Federal Highway Administrator to the end that the Manual shall be at all times and as far as practicable a complete and up-to-date presentation of best practices.

Although public meetings of this Advisory Committee are held in January and June each year, notice is hereby given of the topics currently under consideration so that maximum public input can be received.

A. *General.* The design and application of standard traffic control devices are under consideration as follows:

a. Signs denoting availability of DIESEL fuel.
b. Signs warning of weight (load) restrictions.
c. Signs for rest room facilities at rest areas.
d. Control devices for use of public median crossovers.
e. Bike route trailblazers.
f. Ramp terminal destination signs.
g. Use of "Star of Life" symbol to denote emergency medical system facilities.
h. Use of post-mounted delineators.
i. Revision of MERGE traffic sign.
j. Mandatory use of highway edgelines.

B. *Traffic Control Devices handbook—An Operating Guide.* The Traffic Control Devices Handbook—An Operating Guide was prepared as a supplement to the Manual on Uniform Traffic Control Devices (MUTCD) and issued in December 1974 to assist in

implementation of the provisions of the MUTCD. The current Handbook contains sections on Signs, Signals and Pavement Markings.

Under development are sections to supplement Part VI, MUTCD, Traffic Controls for Construction and Maintenance Operations and Part VIII, MUTCD, Traffic Control Systems for Railroad-Highway Grade Crossings.

C. *Task Forces—Subject Areas.* As a means of expediting review of ongoing topics selected task forces are utilized, as deemed appropriate, within the respective subcommittees or as ad hoc groups representing the Committee as a whole. Currently, task forces are developing advice and recommendations on the following subject areas.

1. Symbols for traffic signs.
2. Guidelines for signing to rest areas.
3. Traffic control devices for public crossovers in medians.
4. Destination legends for ramp terminals.
5. Recreation vehicle traffic control signs.
6. Signing for long, steep grades.
7. Traffic signal phasing, sequences and indications.
8. Pedestrian signals and indications.
9. Flashing beacons.
10. Traffic signal design and operation.
11. Traffic signal warrants.
12. Fundamental principles of traffic control in construction and maintenance areas.

Comments, suggestions or technical input related to the above subjects may be sent to R. H. Conner, Executive Director, National Advisory Committee on Uniform Traffic Control Devices, Office of Traffic Operations, Federal Highway Administration, 400 7th Street SW., Washington, D.C. 20590.

All material received will be transmitted to the appropriate subcommittee or task force for consideration prior to their next public meeting scheduled for June 14–16, 1978.

J. J. CROWLEY,
Director, Office of Traffic Operations.

MARCH 22, 1978.

[FR Doc. 78-9081 Filed 4-5-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

[056230]

AMERICAN MANUFACTURER'S PETITION

Receipt of American Manufacturer's Petition to Reclassify Wide Angle Bicycle Reflectors.

MARCH 29, 1978.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of American manufacturer's petition.

SUMMARY: The Customs Service has received a petition from an American manufacturer requesting the reclassification of imported wide angle bicycle reflectors.

DATES: Interested persons may comment on this petition, and comments must be received on or before May 8, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTAL INFORMATION:

BACKGROUND

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), by an American manufacturer of wide angle bicycle reflectors. The petitioner contends that wide angle bicycle reflectors, which are currently classifiable under item 774.60, Tariff Schedule of the United States (TSUS), are more properly classifiable under the provision for other parts of bicycles, item 732.37, TSUS.

Under General Headnote 10(ij), TSUS, "a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article but does not prevail over a specific provision for such part." There is no specific provision for reflectors in the TSUS. The petitioner contends that, inasmuch as the wide angle bicycle reflector is designed especially for use as a part of a bicycle, and is made to conform with Federal safety standards relating to equipment required for a bicycle, the "chief use" of the wide angle bicycle reflector is as a part of a bicycle, which qualifies it for classification under item 732.37, TSUS.

COMMENTS

Pursuant to section 175.21(a) of the Customs Regulations (19 CFR 175.21(a)), the Customs Service invites written comments on this petition from all interested parties.

The American manufacturer's petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with sections 103.8(b) and 175.21(b) of the Customs Regulations (19 CFR 103.8(b), 175.21(b)) during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

AUTHORITY

This notice is published in accordance with section 175.21(a) of the Customs Regulations (19 CFR 175.21(a).)

LEONARD LEHMAN,
Assistant Commissioner, Regulations and Rulings.

[FR Doc. 78-9108 Filed 4-5-78; 8:45 am]

[4810-22]

[054173]

AMERICAN MANUFACTURER'S PETITION

Receipt of an American Manufacturer's Petition to Revoke Duty-Free Treatment Under the Generalized System of Preferences for Wire Mesh Fabric Imported from Mexico.

MARCH 29, 1978.

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Notice of receipt of American manufactirer's petition.

SUMMARY: The Customs Service has received a petition from an American manufacturer of wire and wire products requesting that wire mesh fabric may not be granted duty-free entry under the Generalized System of Preferences (GSP) when imported from Mexico. The petitioner does not believe that the product meets the requirements set forth in the law for duty-free treatment under the GSP.

DATES: Interested persons may comment on this petition, and comments must be received on or before May 8, 1978.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention: Regulations and Legal Pubications Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

David A. Lee, Special Projects and Programs Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 202-566-5786.

SUPPLEMENTAL INFORMATION:

BACKGROUND

A petition has been filed under section 516 of the Tariff Act of 1930, as ameded (19 U.S.C. 1516), by an American manufacturer of wire and wire products. The petitioner requests that wire mesh fabric, which is currently classifiable under item 642.80 of the Tariff Schedules of the United States, not be granted free entry under the Generalized System of Preferences (GSP) when imported from Mexico. The petitioner believes that the product fails to meet the "value-added" re-

quirements to qualify for free entry under GSP.

Under section 503 of the Trade Act of 1974 (19 U.S.C. 2463), in order for an article to qualify for duty-free entry under the Generalized System of Preferences, 35 percent of the final appraised value of the merchandise must consist of either direct costs of processing operations performed in the beneficiary developing country or of materials produced in the beneficiary developing country. The petitioner describes the manufacturing process for the goods and submits that based on the best information at its disposal, the raw materials for the manufacture of the imported wire mesh fabric, namely carbon steel wire rod, are imported into Mexico. It does not appear that any substantial amount of materials, which could have been considered to have been produced in Mexico, is used in the manufacture of the product. Additionally, based upon petitioner's knowledge of the production pocess, the carbon steel wire rod of non-Mexican origin which is used in the production of the imported wire mesh fabric is no a "substantially transformed constituent material" within the meaning of Treasury Decision 76-100 and section 10.177(a)(2) of the Customs Regulations (19 CFR 10177(a)(2).) Consequently, the petitioner contends that the cost or value of the wire rod may not be included as part of the 35 percent value requirement, either as materials produced by the beneficiary developing country, or as materials substantially transformed in the developing country, under section 10.176 of the Customs Regulations (19 CFR 10.176). As a result, the wire mesh fabric would not qualify for duty-free treatment under the GSP.

COMMENTS

Pursuant to section 175.21(b) of the Customs Regulations (19 CFR 175.21(b)), the Customs Service invites written comments on this petition from all interested parties.

The American manufacturer's petition, as well as all comments received in response to this notice will be available for public inspecton in accordance with sections 103.8(b) and 175.21(a) of the Customs Regulations (19 CFR 103.8(b), 175.21(a)) during regular business hours at the Regulations and Legal Publications Division, Headquarters, Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229

AUTHORITY

This notice is being published in accordance with section 175.21(a) of the Customs Regulations (19 CFR 175.21(a)).

DONALD W. LEWIS,
Acting Assistant Commissioner Regulations and Rulings.

[FR Doc. 78-9110 Filed 4-5-78; 8:45 am]

[4810-22]

[054578]

AMERICAN MANUFACTURER'S

Petition

Withdrawal of an American Manufacturer's Petition To Revoke Duty-Free Treatment Under the Generalized System of Preferences for Technical Chlorobenzilate imported from Israel

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Notice of withdrawal of American manufacturer's petition.

SUMMARY: The Customs Service has received a request from an American manufacturer of chemicals to withdraw their petition asking that Technical Chlorobenzilate not be granted free entry under the Generalized System of Preferences (GSP) when imported from Israel. The withdrawal of the petition terminates all action by the Customs Service with respect to the petition under the law and regulations.

DATE: Withdrawal of the American manufacturer's petition was requested on January 24, 1978.

FOR FURTHER INFORMATION CONTACT:

David A. Lee, Special Projects and Programs Branch, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5786.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 10, 1978, notice was published in the FEDERAL REGISTER (43 FR 1578) that a petition filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), by CIBA-GEIGY Corporation of Ardsley, N.Y., an American manufacturer of chemicals. The petitioner requested that Technical Chlorobenzilate not be granted free entry under the Generalized System of Preferences (GSP) when imported from Israel, since it was alleged that the product did not meet the "value-added" requirements to qualify for the entry under GSP. By letter of January 24, 1978, the petitioner requested that the aforementioned petition be withdrawn. Because of this withdrawal, all action with respect to the petition under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), and Part 175 of the Customs Regulations (19 CFR Part 175) is terminated.

This notice is being published in accordance with section 175.21(a) of the Customs Regulations (19 CFR 175.21(a)).

DONALD W. LEWIS,
Acting Assistant Commissioner Regulations and Rulings.

[FR Doc. 78-9110 Filed 4-5-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Volume No. 77]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

MARCH 29, 1978.

The following applications are governed by Special Rule 247 of the Commission's *General Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with Section 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the prodeeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use a such authority to provide all or part of the service proposed), and shall specify with particularly the facts, matters, and things relied upon, but shall not include issues or allegations to be used generally. Protest not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if not representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(e)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal

thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 200 (Sub-No. 300F), filed February 21, 1978. Applicant: RISS INTERNATIONAL CORP., (a Delaware corporation) 903 Grand Avenue, Kansas City, MO 64142. Applicant's representative: Rodger J. Walsh, 903 Grand Avenue, Kansas City, MO 64106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs, frozen or unfrozen* (except in bulk), from Kansas City, MO-KS commercial zone to points in the States of CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, DC, OH, IN, KY, MI, IL, IA, NE, and WI.

NOTE.—Hearing site: Kansas City, MO.

No. MC 4963 (Sub-No. 59F), filed February 16, 1978. Applicant: ALLEGHANY CORP., doing business as JONES MOTOR, Bridge Street and Schuylkill Road, Spring City, PA 19475. Applicant's representative: Roland Rice, Perpetual Building, Suite 501, Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cast iron pipe and cast iron pipe fittings*, between, Lynchburg, VA, and MD, PA, NY, NJ, ME, NH and VT. If a hearing is deemed necessary, applicant requests that it be held at Washington, DC.

No. MC 8771 (Sub-No. 40 F), filed February 16, 1978. Applicant: SAW MILL SUPPLY, INC., 1018 Saw Mill River Road, Yonkers, NY 10710. Applicant's representative: John R. Sims, Jr., 915 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of (a) *Aluminum pipe, fittings and accessories* from Ellenville, NY, to Los Angeles and Oakland, CA, Portland, OR, and Seattle, WA; and (b) *aluminum billets* from the destination points listed in (a) above to Ellenville, NY. Hearing site: Washington, DC, or New York, NY.

No. MC 19311 (Sub-No. 41 F), filed February 21, 1978. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Applicant's representative: Walter N. Bieneman, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), serving Ludington, MI, as an off-route point in connection with otherwise authorized service at Muskegon and Midland, MI. (Hearing site: Lansing, MI). Common control may be involved.

No. MC 31389 (Sub-No. 239F), filed February 21, 1978. Applicant: McCLEAN TRUCKING CO., a corporation, 617 Waughtown Street, Winston-Salem, NC 27107. Applicant's representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plantsite and facilities of the Public Service Co. of Indiana, located at or near Marble Hill, IN, as an off-route point in connection with applicant's authorized regular route operations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests that it be held at Washington, DC, or Louisville, KY.

No. MC 35628 (Sub-No. 396F) (Correction), filed February 6, 1978, published in the FEDERAL REGISTER issue of March 9, 1978, as "MC 35628 (Sub-No. 369), and republished this issue.

No. MC 35628 (Sub-No. 396F), filed February 6, 1978. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, a corporation, 134 Grandville Avenue SW., Grand Rapids, MI 49503. Applicant's representative: Michael P. Zell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the site and facilities of K-Mart Corp.'s Distribution Center in Coweta County, GA, as an off-route point in connection with applicant's existing regular route authority.

NOTE.—The purpose of this republication is to show correct Sub-No. 396 that was incorrectly published in the FEDERAL REGISTER. If a hearing is deemed necessary applicant requests it be held on a consolidated record with similar applications located in Detroit, MI, or Washington, DC.

No. MC 35628 (Sub-No. 398F), filed March 22, 1978. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, a corporation, 134 Grandville Avenue SW., Grand Rapids, MI 49503. Applicant's representative: Michael P. Zell, 134 Grandville Avenue SW., Grand Rapids, MI 49503. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requireing special equipment): 1. Between Kansas City, KS-MO, and Oklahoma City, OK: From Kansas City over Interstate Hwy 70 to Topeka, then from Topeka over Kansas Turnpike to junction Interstate Hwy 35, then over Interstate Hwy 35 to Oklahoma City and return over the same route. 2. Between Kansas City, KS-MO, and Oklahoma, OK: From Kansas City over Interstate Hwy 35 to junction U.S. Hwy 50, then over U.S. Hwy 50 to junction U.S. Hwy 169, then over U.S. Hwy 169 to Tulsa, then from Tulsa over Interstate Hwy 44 to Oklahoma City and return over the same route. 3. Between Kansas City, KS-MO, and Tulsa, OK: From Kansas City over U.S. Hwy 71 to junction Interstate Hwy 44, then over Interstate Hwy 44 to Tulsa and return over the same route. 4. Between St. Louis, MO, and Oklahoma City, OK: From St. Louis over Interstate Hwy 44 to Oklahoma City and return over the same route; serving in (1) through (4) above all points in the following counties as off-route points in connection with applicant's regular route operations: Adair, Canadian, Custer, Caddo, Cleveland, Comanche, Carter, Creek, Craig, Cherokee, Garfield, Grady, Garvin, Kingfisher, Kay, Logan, Lincoln, Le Flore, McClain, Murray, Mayes, Muskogee, McIntosh, Noble, Nowatta, Osage, Ottawa, Okmulgee, Oklahoma, Payne, Pottawatomie, Pontotoc, Pawnee, Pittsburg, Rogers, Stephens, Seminole, Sequoyah, Tulsa, Wagoner, and Washington.

5. Between Kansas City, KS-MO, and Little Rock, AR: From Kansas City over U.S. Hwy 71 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Little Rock and return over the same route. 6. Between Kansas City, KS-MO, and Little Rock, AR: From Kansas City over U.S. Hwy 71 to junction MO Hwy 7, then over MO Hwy 13 to Springfield, then from Springfield over U.S. Hwy 65 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Little Rock and return over the same route. 7. Between Kansas City, KS-MO, and Jonesboro, AR: From Kansas City over U.S. Hwy 71 to junction MO Hwy 13, then over

MO Hwy 13 to Springfield, then from Springfield over U.S. Hwy 60 to junction U.S. Hwy 63, then over U.S. Hwy 63 to Jonesboro and return over the same route. 8. Between St. Louis, MO, and Little Rock, AR: From St. Louis over Interstate Hwy 55 to junction U.S. Hwy 67, then over U.S. Hwy 67 to Little Rock and return over the same route. 9. Between St. Louis, MO, and Fort Smith, AR: From St. Louis over Interstate Hwy 44 to junction MO Hwy MM, then over MO Hwy MM to junction U.S. Hwy 60, then over U.S. Hwy 60 to junction U.S. Hwy 37, then over U.S. Hwy 37 to junction U.S. Hwy 62, then over U.S. Hwy 62 to junction U.S. Hwy 71, then over U.S. Hwy 71 to Fayetteville, then from Fayetteville over U.S. Hwy 71 to U.S. Hwy 59, then over U.S. Hwy 59 to Fort Smith and return over the same route. 10. Between St. Louis, MO, and Little Rock, AR: From St. Louis over Interstate Hwy 55 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Little Rock and return over the same route; serving in (5) through (10) above all points in the following counties as off-route points in connection with applicant regular route operations: Arkansas, Ashley, Bradley, Benton, Clay, Craighead, Cross, Crittenden, Cleburne, Conway, Calhoun, Columbia, Crawford, Garland, Grant, Greene, Hot Spring, Howard, Hempstead, Independence, Jefferson, Jackson, Lincoln, Little River, Lafayette, Lonoke, Lee, Logan, Lawrence, Mississippi, Madison, Monroe, Montgomery, Nevada, Ouachita, Phillips, Pulaski, Prairie, Perry, Poinsett, Pike, Randolph, Sharp, Saint Francis, Sebastian, Saline, Sevier, Union, Van Buren, Washington, White, and Woodruff. 11. Between Oklahoma City, OK, and Fort Smith, AR: From Oklahoma City over Interstate Hwy 40 to junction U.S. Hwy 64, then over U.S. Hwy 64 to Fort Smith and return over the same route; for purposes of joinder only. 12. Between Tulsa, OK, and Fort Smith, AR: From Tulsa over Muskogee Turnpike to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction U.S. Hwy 64, then over U.S. Hwy 64 to Fort Smith and return over the same route; for purposes of joinder only. 13. Between Tulsa, OK, and Fayetteville, AR: From Tulsa over U.S. Hwy 33 to junction U.S. Hwy 68, then over U.S. Hwy 68 to junction U.S. Hwy 71, then over U.S. Hwy 71 to Fayetteville and return over the same route; for purposes of joinder only. 14. Between Oklahoma City, OK, and Fayetteville, AR: From Oklahoma City over Interstate Hwy 40 to junction U.S. Hwy 71, then over U.S. Hwy 71 to Fayetteville and return over the same route; for purposes of joinder only. 15. Between Fort Smith, AR, and Little Rock, AR: From Fort Smith over U.S. Hwy 59 to junction U.S. Hwy 71, then over U.S. Hwy 71 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Little Rock and return over the same route; for purposes of joinder only. 16. Between St. Louis, MO, and U.S. Hwy 63: From St. Louis over Interstate Hwy 55 to junction U.S. Hwy 62, then over U.S. Hwy 62 to junction U.S. Hwy 63 and return over the same route; for purposes of joinder only.

NOTE.—Hearing site, Little Rock, AR, Atlanta, GA, or Oklahoma City, OK.

No. MC 41404 (Sub-No. 140F), filed February 21, 1978. Applicant: ARGO-COLLIER TRUCK LINES CORP., P.O. Box 440, Martin, TN 38237. Applicant's representative: Mark L. Horne (Same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Merchandise* dealt in by wholesale, retail, chain grocery, and food business houses (except in bulk, in tank vehicles) in mechanically refrigerated equipment, from the facilities of Kraft, Inc., at Atlanta, Decatur, and Tucker, GA, to points in AL, LA, and MS.

NOTE.—If a hearing is deemed necessary applicant requests that it be held at Atlanta, GA, or Nashville, TN.

No. MC 52460 (Sub-No. 206F), filed February 21, 1978. Applicant: ELLEX TRANSPORTATION, INC. 1420 West 35th Street, P.O. Box 9637, Tulsa, OK 74107. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lubricating oil*, in bulk, in tank vehicles, from St. Louis, MO, to AR, CO, LA, KS, LA, MN, MS, NE, OK, TN, and TX.

NOTE.—Hearings site: Frankfort, KY.

No. MC 52704 (Sub-No. 163F), filed February 21, 1978. Applicant: GLENN McCLENDON TRUCKING CO., INC., P.O. Drawer "H", LaFayette, AL 36862. Applicant's representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass or plastic containers and closures*, from Montgomery, AL, to points in VA, and (2) *materials, equipments, and supplies* used in the manufacture and distribution of glass and plastic containers and closures, from points in VA to Montgomery, AL.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Atlanta, GA.

No. MC 63417 (Sub-No. 130F), filed February 21, 1978. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. BOX 13447, Roanoke, VA 24034. Applicant's representative: William E. Bain, P.O. Box 13447, Roanoke, VA 24034. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Synthetic yarn or fiber* from Cordova, AL; Valley Head, AL, and Old Hickory, TN, to the facilities of Martin Processing, Inc., at or near Fieldale, VA.

NOTE.—Hearing site: Roanoke, VA.

No. MC 71642 (Sub-No. 29F), filed February 21, 1978. Applicant: CONTRACTUAL CARRIERS, INC., Harmony Industrial Park, Newark, DE 19711. Applicant's representative: Samuel W. Earnshaw, 833 Washington Building, Washington, DC. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Chemically hardened fibre and insulating materials, articles, sheets, shapes, forms, and plastics and plastic articles, sheets, shapes, forms, rods, tubes, grindings and pellets*, between Delaware City Commercial Zone and Newark, DE, on the one hand, and, on the other, Hialeah and Miami, FL, Indianapolis and Richmond, IN, and Mt. Vernon, NY, and Holbrook and Holtsville, Long Island, NY, under a continuing contract or contracts with Keysor Corp.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at Washington, DC.

No. MC 78400 (Sub-No. 58F), filed February 21, 1978. Applicant: BEAUFORT TRANSFER CO., a corporation, Box 151, Gerald, MO 63037. Applicant's representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, MO 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared animal feeds*, from Rolla, MO, to points in the United States (except AK and HI).

NOTE.—If a hearing is deemed necessary, applicant requests it be held at St. Louis or Jefferson City, MO.

No. MC 82079 (Sub-No. 58) (correction), filed December 23, 1978, published in the FEDERAL REGISTER issue of February 9, 1978, and republished as corrected, this issue. Applicant: KELLER TRANSFER LINE, INC., 5635 Clay Avenue SW., Grand Rapids, MI 49508. Applicant's representative: Edward Malinzak, 900 Old Kent Building, Grand Rapids, MI 49503. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in mechanically refrigerated vehicles, except in bulk, from the plantsites and warehouse facilities of Terminal Ice & Cold Storage Co. in Bettendorf, IA, to points in IN and MI. Restricted to traffic originating at the above-named origin sites and destined to named IN and MI points.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at, Lansing,

MI, or Chicago, IL. Common control may be involved. Dual operations may be involved. The purpose of this republication is to correct the commodity description to read, "Foodstuffs" in lieu of Frozen foods.

No. MC 95876 (Sub-No. 229F), filed February 21, 1978. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, MN 56301. Applicant's representative: Robert D. Gisvold, 1000 First National Bank Building, Minneapolis, MN 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber mill products*, from Pine Bluff and Sheridan, AR, to points in CO, IL, IN, IA, KS, KY, MI, MN, NE, ND, OH, PA, SD, and WI.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at St. Louis, MO, or Little Rock, AR.

No. MC 95876 (Sub-No. 230F), filed February 21, 1978. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, MN 56301. Applicant's representative: Robert D. Gisvold, 1000 First National Bank Bulding, Minneapolis, MN 55402. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: (1) *Precast stone*, and (2) *materials and supplies* used in the installation of precast stone, from points in Sacramento County and Yolo County, CA, to points in the United States (except AK and HI).

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at San Francisco, CA.

No. MC 100666 (Sub-No. 381F), filed February 23, 1978. Applicant: MELTON TRUCK LINES, INC., P.O. Box 766, Shreveport, LA 71107. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: (1) *Zinc, zinc alloy and zinc products*, from Montgomery County, TN, to point in and east of KS, NE, ND, OK, SD, and TX, and (2) *equipment, machinery, material and supplies* (except commodities in bulk), used in the manufacture, process, or distribution of commodities in (1) above, from points in and east of KS, NE, ND, OK, SD, and TX, to points in Montgomery County, TN. Restriction: Restricted to the transportation of traffic originating at or destined to the named origins and named destinations in (1) and (2) above, except traffic moving in foreign commerce. (Hearing site: Nashville, TN.)

No. MC 104421 (Sub-No. 25F), filed February 22, 1978. Applicant: ECONOLINES, INC., P.O. Box 623, D.T.S., Omaha, NE 68101. Applicant's representative: Roger W. Norris, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except foodstuffs, classes A and B explosives, commodities in bulk and commodities requiring the use of special equipment), between points in Burt County, NE, on the one hand, and, on the other, points in AL, AZ, FL, GA, ID, KY, (except Louisville), LA, MS, MT, NV, NM, NC, OR, SC, TN, UT, VA, WA, WV, and WY.

NOTE.—If oral hearing is deemed necessary, applicant requests it be held at Omaha, NE. Common control may be involved.

No. MC 106644 (Sub-No. 251F), filed February 21, 1978. Applicant: SUPERIOR TRUCKING CO., INC., P.O. Box 916, Atlanta, GA 30301. Applicant's representative: Frank Hall, Suite 713, 3384 Peachtree Road NE., Atlanta, GA 30326. Authority sought to operate as a *common carrier*, over irregular routes by vehicle, transport: (1)(a) *Commodities* which, because of size, weight, or shape, require the use of special equipment or special handling; and (b) *attachments, parts, machinery, materials, and supplies* related to the commodities named in Part (1)(a) and moving in connection therewith, (2) *self-propelled articles*, each weighing 15,000 pounds or more, and related machinery, tools, parts, and supplies moving in connection therewith, (3) *commodities* which, because of size, weight, or shape, do not require the use of special equipment or special handling when transported as part of the same shipment with either (a) commodities which because of size, weight, or shape require the use of special equipment or special handling, or (b) *self-propelled articles* each weighing 15,000 pounds or more, (4) *machinery or machines or parts thereof*, between points in CT, DE and DC, on the one hand, and, on the other, points in AL, AR, FL, GA, KS, KY, LA, MS, MO, NC, OK, SC, TN, VA, WV, and TX. (Hearing site: (1) Atlanta, GA, (2) Washington, DC.)

No. MC 107110 (Sub-No. 7F), filed February 22, 1978. Applicant: B & D TRANSFER, INC., Main Street, P.O. Box 133, Liberty, PA 16930. Applicant's representative: David A. Sutherlund, 1150 Connecticut Avenue NW., Suite 400 Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pipe fittings* and castings from the facilities of J. P. Ward Foundries, Inc., in or near Blossburg, PA, to points in DE, IN, KY, VA, WV, and Chicago, IL, and (2) *materials and supplies* used in the manufacture of pipe fittings and castings from DE, IN, KY, VA, WV, and Chicago, IL, to the facilities of J. P. Ward Foundries, Inc., in or near Blossburg, PA.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at either Harrisburg, Pa, or Washington, DC.

No. MC 107403 (Sub-No. 1062F), filed February 22, 1978. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Applicant's representative: Martin C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, over irregular routes, transporting *paint and paint products*, in bulk, in tank vehicles, (1) from Oak Creek, WI to Cleveland, OH, and points in CA, and (2) from Wallingford, CT, to ports of entry on the international boundary line between the United States and Canada which lie between Buffalo, NY and Calais, ME, including Buffalo, NY and Calais, ME.

NOTE.—Common control may be involved. (Hearing site: Washington, DC.)

No. MC 107403 (Sub-No. 1063F), filed February 16, 1978. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Applicant's representative: Martin C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, over irregular routes, transporting *paint and paint products*, in bulk, in tank vehicles, from Circleville and Cleveland, OH, and to points in CA.

NOTE.—Common control may be involved. (Hearing site: Washington, DC.)

No. MC 109533 (Sub-No. 102F), filed February 21, 1978. Applicant: OVERNITE TRANSPORTATION CO.—a corporation, P.O. Box 1216, Richmond, BA 23209. Applicant's representative: John C. Burton, Jr., 1000 Semmes Avenue, Richmond, VA 23224. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment): (1) Serving the plantsite of Russell Stover Candies, Inc. at or near Cookeville, TN.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests that it be held at Knoxville, TN or Washington, DC.

No MC 110525, (Sub-No. 1227, Filed February, 16, 1978. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, PA 19335. Applicant's representative: Thomas J. O'Brien, same address as applicant. Authority sought to operate as a *common carrier*, by motor vehicles over irregular routes transporting: *Chemicals, in bulk, in tank vehicles* from Avondale, LA to points in US (except AS and HI).

NOTE.—(hearing site: New York, NY or Washington, DC).

No. MC 110563 (Sub-No. 217F), filed February 17, 1978. Applicant: COLD-WAY FOOD EXPRESS, INC., P.O. Box 747, St. Route 29 North, Sidney, OH 45365. Applicant's representative: Joseph M. Scanlan, 111 West Washington Avenue, Chicago, Ill 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such Goods, Wares and Merchandise* as are used, manufactured or distributed by persons engaged in the manufacture, sale or distribution of sugar, from New York, NY to points in OH, IN, MI, ILL, KY, IA, MO, AND WI. Restriction: Restricted to the transportation of the above-named commodities in packages or containers and further restricted to traffic originating at the plant or warehouse facilities utilized by Amstar Corp. in New York, NY, and destined to the aforenamed destination States.

NOTE.—If a hearing deemed necessary, the applicant requests it be held at New York, NY.

No. MC 110686 (Sub-No. 55F), filed February 22, 1978. Applicant: McCORMICK DRAY LINE, INC., Avis, PA 17721. Applicant's representative: David A. Sutherlund, 1150 Connecticut Avenue NW., Suite 400. Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Buildings, building panels, building parts, and materials, accessories, and supplies* used in the installation, erection and construction of buildings, building panels, and building parts (except commodities in bulk), from the facilities of Butler Manufacturing Co. at or near Annville, Lebanon County, PA, to points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IO, KS, LA, MI, MN, MS, MO, MT, NE, NV, NM, ND, OK, OR, SC, SD, TX, UT, WA, WI and WY.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at Washington, DC.

No. MC 113678 (Sub-No. 714F), filed February 8, 1978. Applicant: CURTIS INC., 4810 Pontiac Street, Commerce City, CO 80022. Applicant's representative: Roger M. Shaner (same as Applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts*, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except commodities in bulk), from the facilities of Limon Packing Co., located at or near Limon, CO, to points in the Unites States (except AK and HI).

NOTES.—If a hearing is deemed necessary, the applicant requests that is be held at Denver, CO.

No. MC 113855 (Sub-No. 408F), filed February 21, 1978. Applicant: INTERNATIONAL TRANSPORT, INC., a Corporation, 2450 Marion Road SE., Rochester, MN 55901. Applicant's representative: Thomas J. Van Osdel, 502 First National Bank Building, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, in interstate or foreign commerce, transporting: (1) *Boiler system, filtering machines, boiler accessories* and *parts* and *attachments* from Greenville, MS, to points in the United States, including AK, but (excluding HI;) (2) *Materials, equipment* and *supplies*, used in the manufacture and distribution of the commodities described in (1) above, from points in the United States, including AK, but (excluding HI,) to Greenville, MS.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, DC

No. MC 114211 (Sub-No. 346F), filed February 21, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Applicant's representative: Daniel Sullivan, Suite 1600, 10 South La Salle, Chicago, IL 60603. Authority sought to operate as a *common carrier*, over irregular routes, to transport: *Heat Recovery Equipment* from Newberg, OR to points in the United States (except AK and HI).

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Portland, OR, Seattle, WA, or San Francisco, CA.

No. MC 114211 (Sub-No. 347F), filed February 21, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo IA 50704. Applicant's representative: Daniel Sullivan, Suite 1600, 10 South La Salle, Chicago, IL 60603. Authority sought to operate as a *common carrier*, over irregular routes, by motor vehicle, transporting: *Lumber and lumber mill products*, From AZ, CO, and NM to all points in NE, IA, MN, WI, MI, IL, IN, OH, PA, WV, TN, and KY.

NOTE.—If a hearing is deemed necessary, it be held at either Denver, CO, or the same time and place as a similar application of National Trailer Convoy.

MC 114273 (Sub-No. 350F), filed February 21, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Applicant's representative: Kenneth L. Core (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides, pelts* and *skins* from St. Cloud, MN, to points in the states of DE, MD, MI, NY, PA, VA, WV, WI, and Chicago, IL, restricted to traffic originating at the plantsite and storage facilities utilized by Landy Packing at or near St. Cloud, MN and destined to the named points.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at either Chicago, IL or Washington, DC.

No. MC 114552 (Sub-No. 153F), filed February 17, 1978. Applicant: SENN TRUCKING CO., a Corporation, Post Office Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: *Hardwood flooring, and materials, equipment and supplies* used in the installation or distribution of hardwood flooring (except in bulk), from the facilities of Bruce Hardwood Floors located at or near Center, TX, and Jackson and Nashville, TN, to points in the United States in and east of ND, SD, NE, KS, OK and TX.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Dallas, TX or Washington, DC.

No. MC 114569 (Sub-No. 210F), filed February 21, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Applicant's representative: N. L. Cummins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese and cheese products* (except in bulk), from the plant site of Farmers Cheese Co-op. Association, at or near New Wilmington, PA to points in the State of Ohio.

NOTE.—Common control may be involved (Hearing site—Harrisburg, PA).

No. MC 114632 (Sub-No. 146F), filed February 17, 1978. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Applicant's representative: Michael L. Carter, P.O. Box 287, Madison, SD 57042. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes; transporting: *Bentonite Clay and Lignite Coal, Treated or Untreated* from the facilities of American Colloid Co., located in Crook County, WY, to points in the United States (except AK and HI).

NOTE.—Applicant holds motor contract carrier authority in No. MC-129706, therefore dual operations may be involved. If a hearing is deemed necessary, applicant request it be held at either Chicago, IL or Minneapolis, MN.

No. MC 114632 (Sub-No. 147F), filed February 21, 1978. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Applicant's representative: Michael L. Carter, P.O. Box 287, Madison, SD 57042. Authority sought to op-

erate as a *common carrier*, by motor vehicles, over irregular routes; transporting: *Hides, skins, and pelts, and pieces, therefrom* (except commodities in bulk) from the hide plant of Iowa Beef Processors, Inc., at or near Dakota City, NE, to points in the States of: CA, IL, IN, KS, KY, MA, MI, MN, MO, NH, NY, NJ, OR, PA, TX, WA, and WI; and the Ports of Entry on the International Boundary Line between the United States and Canada located in ID, MN, MT, MI, NY, ND, and WA. Restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations except for export traffic.

NOTE.—Applicant holds motor contract carrier authority in No. MC-129706, therefore dual operations may be involved. If a hearing is deemed necessary, applicant request it be held at either Sioux City, IA or Omaha, NE.

No. MC 115669 (Sub-No. 167F), filed February 23, 1978. Applicant: DAHLSTEN TRUCK LINE, INC., 101 West Edgar Street, P.O. Box 95, Clay Center, NE 68933. Applicant's representative: Howard N. Dahlsten, 101 West Edgar Street, P.O. Box 95, Clay Center, NE 68933. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes; transporting: *Bentonite clay & lignite coal (treated or untreated)*, from the facilities of American Colloid Co., in Crook County, WY, to points in AR, CO, IL, IA, KS, MN, MO, NE, ND, OK, SD, TX and WI.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Omaha, NE.

No. MC 115703 (Sub-No. 12F), filed February 21, 1978. Applicant: KREITZ MOTOR EXPRESS, INC., P.O. Box 375, 220 Park Road North, Wyomissing, PA 19610. Applicant's representative: Robert D. Gunderman, Suite 710 Statler Hilton, Buffalo, NY 14202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes; transporting: (1) *Articles* the transportation of which because of size or weight requires the use of special handling or equipment, and (2) articles which do not require the use of special handling or equipment, moving in the same vehicle and at the same time in mixed loads with the commodities named in (1) above, when the mixed load moves on a single bill of lading from a single consignor, between Lancaster County, PA, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, IN, KY, ME, MD, MA, MI, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, DC, LA and TX.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Buffalo, NY.

No. MC 115826 (Sub-No. 282) (Correction), filed December 20, 1978, published in the FEDERAL REGISTER issue of February 16, 1978 and republished this issue. Applicant: W. J. DIGBY, INC., P.O. Box 5088 Terminal Annex, Denver, CO 80217. Applicant's representative: Howard Gore, P.O. Box 5088 Terminal Annex, Denver, CO 80217. Authority sought to operate as a *common carrier*, by motor vehicles, over irregular routes; transporting: *New furniture, new furniture parts, lamps, and lamp shades*, from points in CA to points in AZ, CO, ID, NM, UT, and WY.

NOTE.—The purpose of this republication is publish correct destination points that was incorrectly published in the FEDERAL REGISTER. If a hearing is deemed necessary, applicant requests it be held in Phoenix, AZ.

No. MC 115841 (Sub-No. 599F) (Correction), filed February 1, 1978 published in the FEDERAL REGISTER issue of March 9, 1978 as "MC 115841 (Sub-No. 559)" and republished this issue. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., Suite 110, 9041 Executive Park Drive, Knoxville, TN 37919. Applicant's representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, N.W., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 (except commodities in bulk) from the facilities utilized by Swift & Co. located at or near Glenwood, Sioux City, Des Moines, and Marshalltown, IA, and Omaha, NE, to points in AL, FL, GA, NC, SC, and TN, restricted to the transportation of shipments originating at and destined to the named origins and destinations.

NOTE.—The purpose of this republication is to show correct Sub-No. 599 that was incorrectly published in the FEDERAL REGISTER. Common control may be involved. If a hearing is deemed necessary applicant requests it be held at Chicago, IL, or Washington, DC.

No. MC No. 115841 (Sub-No. 600F), filed February 8, 1978. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., Suite 110, 9041 Executive Park Drive, Knoxville, TN 37919. Applicant's representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, DC. 20001. Authority sought to operate as a *common carrier*, by vehicle, over irregular routes, transporting: (1) *Meats, meat products, meat byproducts and articles distributed by meat packinghouses* as described in Sections A and C to Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 (except commodities in bulk), from Paris, TX, to points in AL, CA, CO, FL, GA, IL, IN, KS, KY, LA, MA, MI, NC, NJ, NY, OH, SC, TN, TX, VA, WA, and DC and (2) *materials, equipment and supplies* used in the production, processing, sale and distribution of the commodities described in paragraph (1) above (except commodities in bulk) from points in IL, IN, IA, KS, KY, MI, MN, MO, NE, OH, OK, SC, TN, and WI to Paris, TX.

NOTE.—Common control may be involved. If a hearing is deemed necessary applicant requests that it be held at Dallas, TX, or Washington, DC.

No. MC 115931 (Sub-No. 50F), filed February 9, 1978. Applicant: BEE LINE TRANAPORTATION, INC., P.O. Box 3987; Missoula, MT 59801. Applicant's representative: Gene P. Johnson, P.O. 2471, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Split cedar fencing, lumber, lumber mill products* and *wood products*, from the facilities of Potlatch Corp. located at or near Post Falls, Coeur d'Alene, St. Maries, Santa, Potlatch, Lewiston, Spalding, Kamiah, and Jaype, ID, to points in IL, IA, MN, SD, and WI.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Spokane, WA.

No. MC 116300 (Sub-No. 35F), filed February 21, 1978. Applicant: NANCE AND COLLUMS, INC., P.O. Drawer J, Fernwood, MS 29635. Applicant's representative: Harold D. Miller, Jr., 1700 Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sugar*, in sacks and packages, from Decatur, AL, to Reserve and New Orleans, LA.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at New Orleans, LA, or Jackson, MS.

No. MC 116763 (Sub-No. 402F), filed February 21, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Applicant's representative: H. M. Richters, North West Street, Versailles, OH 45380. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, printed matter, products* produced or distributed by manufacturers and converters of paper and paper products, from the plantsite and storage facilities of Scott Paper Co. at Winslow and Portland, ME, and Somerset County, ME, to points in AL, AZ, AR, CA, CO, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NV, NM, NC, OH, OK, SC, TN, TX, UT, VA, WV, WI, DC, and Harrisburg, PA, and points in that part of Pennsylvania on and west of U.S. Hwy 15.

NOTE.—If a hearing is deemed necessary the applicant requests it be held at Boston, MA.

No. MC 116915 (Sub-No. 47F), filed February 8, 1978. Applicant: ECK MILLER TRANSPORTATION CORP., 1830 S. Plate Street, Kokomo, IN 46901. Applicant's representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* (1) between El Paso, TX, on the one hand, and, on the other, points in AZ, CA, CO, NM, NV, OR, ID, MT, WA, WY, UT, NE, and TX; and (2) between Fort Worth, TX, and Dallas, TX, on the one hand, and, on the other, points in AZ, AR, CO, KS, LA, MS, MO, NE, NM, OK, IL, and TX.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Louisville, KY, Frankfort, KY, or Washington, DC.

No. MC 117613 (Sub-No. 25F), filed February 21, 1978. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Applicant's representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417,. Hagerstown, MD 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fuel Oils*, from DC, to points in Washington County, MD, under a continuing contract or contracts with Basore Oil Co., Inc.

NOTE.—Applicant holds common carrier authority in No. MC 138438 (Sub-No. 3) and other subs thereunder, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held in Hagerstown, MD, or DC.

No. MC 117644 (Sub-No. 48F), filed February 23, 1978. Applicant: D & T TRUCKING COMPANY, INC., 498 First Street Northwest, New Brighton, MN 55112. Applicant's representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Anatomical models, photographic paper and film, X-Ray film, graphic arts film, chemicals*, and *related equipment, supplies and materials* used in the manufacture of photographic, X-ray and graphic arts products, in temperature controlled vehicles, from the Minnesota Mining and Mfg. Co. facilities at or near Rochester, NY, to the Minnesota Mining and Mfg. Co. facilities in the Chicago, IL; Ames, IA, and St. Paul, MN Commercial Zones, under a continuing contract or contracts with Minnesota Mining and Mfg. Co.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at St. Paul or Minneapolis, MN.

No. MC 118535 (Sub-No. 115F), filed February 21, 1978. Applicant: TIONA TRUCK LINE, INC., 111 So. Prospect, Butler, MO 64730. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Center, 3535 N. W. 58th, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lead, lead alloys and lead by-products* (except commodities which because of size or weight require the use of special equipment); (2) *junk batteries and battery plates*, (1) From the facilities utilized by Schuylkill Metals Corp. located near Forest City, MO (Holt County) to all points in AZ, AR, CO, IL, IN, IA, KS, KY, LA, MN, MS, NE, NM, ND, OK, SD, TN, TX AND WI; (2) From AZ, AR, CO, IL, IN, IA, KS, KY, LA, MN, MS, NE, NM, ND, OK, SD, TN, TX AND WI, to the facilities of Sohuylkill Metals Corp., Forest City, MO.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Kansas City, MO.

No. MC 118831 (Sub-No. 158F), filed February 23, 1978. Applicant: CENTRAL TRANSPORT, INC., P.O. Box 7007, High Point, NC 27264. Applicant's representative: Earlie O. Jones, P.O. Box 7007, High Point, NC 27264. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials, anhydrous ammonia, urea and soda ash*, in bulk, in tank vehicles, from points in Richmond County, GA, to points in SC, NC, VA, WV, TN, and KY.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, DC or Atlanta, GA.

No. MC 118989 (Sub-No. 178F), filed February 21, 1978. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th Street, Milwaukee, WI 53221. Applicant's representative: Albert A. Andrin, 180 North La Salle Street, Chicago, IL 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers*, (1) from the facilities of Schoeneck Container, Inc. at New Berlin, WI, to points in KS, NE, NJ, NY, ND, OK, SD, TN, TX, VA, and WV; (2) from Williamston, MI; Paterson, NJ; Brooklyn, NY; Blacklick, Columbus and Port Clinton, OH; to IL, IN, IA, KY, MI, MN, MO, NY, OH, PA, TN, and WI for the account of M. Jacob & Sons (a corporation) at Detroit, MI; and (3) from Addison, Chicago, Des Plaines, Vandalia and West Chicago, IL; La Porte and Lapel, IN; Louisville and Sloatsburg, KY; Deep River and Easthampton, MA; Lansing and Williamston, MI; Rosemount, MN; Freehold, Paterson, Rockaway, South Grafton and Yardville, NJ; Brooklyn and Plattsburgh, NY; Blacklick, Cleveland, Columbus, Jackson Center, Medina, Port Clinton and Zanesville, OH; Ada and Muskogee, OK; Boyertown, Knox, Port Allegany and Washington, PA; Harrisonburg, VA; Parkerburg and Wellsburg, WV to points in IL, IN, IA, KY, MI, ME, MO, NY, OH, PA, WV, and WI for the account of Kaufman Container Company (a corporation) of Cleveland, OH.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, IL.

No. MC 118989 (Sub-No. 179F), filed February 21, 1978. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th Street, Milwaukee, WI 53221. Applicant's representative: Albert A. Andrin, 180 North La Salle Street, Chicago, IL 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers*, from the plant and warehouse sites of Inland Steel Container Company at Alsip, IL, to points in AR, IN, KS, MN, NE, PA, TN, and WV.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, IL.

No. MC 119726 (Sub-No. 116F), filed February 22, 1978. Applicant: N.A.B. TRUCKING CO., INC., 1644 West Edgewood Avenue, Indianapolis, IN 46217. Applicant's representative: James L. Beattey, 130 East Washington Street, Suite One Thousand, Indianapolis, IN 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed*, (except in bulk), from the plant and warehouse facilities of Kal-Kan Foods, Inc., at or near Terre Haute and Indianapolis, IN, and Columbus, OH, and Hutchinson, KS, and Matton, IL, to points in the United States in and east of ND, SD, NE, KS, OK, and TX.

NOTE.—If a hearing is deemed necessary, Applicant requests that it be held at Los Angeles or Sacramento, CA.

No. MC 119991 (Sub-No. 19F), filed February 17, 1978. Applicant: YOUNG TRANSPORT, INC., 1601 Woodlawn, P.O. Box 3, Loganport, IN 46947. Applicant's representative: Warren C. Moberly, 777 Chamber of Commerce Building, Indianapolis, IN 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides, skins, pelts, and pieces therefrom* (except commodities in bulk), from the hide plant of Iowa Beef Processors, Inc., at or near Dakota City, NE, to points in the States of DE, IL, IN, KY, LA, ME, MD, MA, MN, MI, NH, NJ, NY, PA, TN, VT, VA, WV, WI; and the ports of entry of the International Boundary Line between the United States and Canada located in MI and NY. Restriction: Restricted to the transportation

of traffic originating at the named origin and destined to the indicated destinations.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Sioux City, IA, or Omaha, NE.

No. MC 121658 (Sub-No. 11F), filed February 21, 1978. Applicant: STEVE D. THOMPSON, 1205 Percy Street, Winnsboro, LA 71295. Applicant's representative: Lawrence A. Winkle, Winkle and Wells, a professional corporation, Suite 1125 Exchange Park, P.O. Box 45538, Dallas, TX 75245. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment), serving Alexandria, LA, as an off-route point in connection with applicant's presently authorized regular routes.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at Alexandria, LA.

No. MC 123048 (Sub-No. 390F), filed February 21, 1978. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st Street, P.O. Box 1557, Racine, WI 53401. Applicant's representative: Paul C. Gartzke, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Environmental control equipment*, from Memphis, TN to points in the United States in and east of ND, SD, NE, KS, OK, and TX; (2) *Materials, equipment and supplies* used in the manufacture, sale, or distribution of the commodities named in part (1) above, from points in the United States in and east of ND, SD, NE, KS, OK, and TX to Memphis, TN. (Hearing site: Memphis, TN, or Detroit, MI.)

No. MC 123048 (Sub-No. 391F), filed February 21, 1978. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st Street, P.O. Box 1557, Racine, WI 53401. Applicant's representative: Paul C. Gartzke, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Outdoor plastic* and *metal internally lighted signs*, from Knoxville, TN, to points in the United States (except AK and HI); (2) *Materials, equipment and supplies* used in the manufacture, sale or distrubution of the commodities named in (1) above (except commodities in bulk); and (3) Return shipments of the commodities named in (1) above, from points in the United States (except AK and HI) to Knoxville, TN. (Hearing site: Knoxville or Nashville, TN.)

No. MC 123048 (Sub-No. 393F), filed February 23, 1978. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st Street, P.O. Box 1557, Racine, WI 53401. Applicant's representative: Paul C. Gartzke, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bulk conveyor systems, pressure vessel systems, heating and cooling systems, anti-pollution systems, fabricated machinery;* and (2) *parts, equipment, materials, supplies and accessories* for commodities in (1) above, between Houston, TX on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Houston or Dallas, TX.)

No. MC 123272 (Sub-No. 17F), filed February 23, 1978. Applicant: FAST FREIGHT, INC., 9651 South Ewing Avenue, Chicago, IL 60617. Applicant's representative: Joseph Winter, 33 North LaSalle Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transportation of such merchandise as is dealt in by wholesale, retail and chain grocery and food business houses and in connection therewith, equipment, materials and supplies used in the conduct of such businesses from Terre Haute, IN to Atlanta, GA; Indianola, MS; and New Orleans, LA.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, IL.

No. MC 123407 (Sub-No. 441F), filed February 21, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Applicant's representative: H. E. Miller, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (*A*) *Cellulose insulation, vermiculite, and materials, equipment, and supplies* used in the manufacture, distribution, and installation of insulation and vermicultie; and (*B*) *the return of equipment, materials, and supplies* used in the manufacture, distribution, and installation of insultation and vermiculite from the destination points named below to the named origin points; (1) Between Armington, IL, on the one hand, and, on the other, points in IL, IN, WI, AR, KY, TN, IA, MO, KS, and OH; (2) between Wellsville, KS, on the one hand, and, on the other, points in AR, OK, TX, KS, NE, MO, IA, IL, IN, KY, TN, and MS; (3) between Dallas, TX, on the one hand, and, on the other, points in TX, LA, MS, AR, OK, KS, MO, CO, and NM; (4) between Orville, OH, on the one hand, and on the other, points in OH, PA, NY, NJ, IN, IL, MI, KY, WV, VA, DE, MD, TN, and NC; (5) between Minnespolis, MN, on the one hand, and, on the other, points in ND, SD, IN, IA, WI, IL, MI, OH, MO, and NE.

NOTE.—Common control may be involved. Hearing site requested: Minneapolis, MN.

No. MC 124174 (Sub-No. 114F), filed February 21, 1978. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, P.O. Box 37490, Omaha, NE 68137. Applicant's representative: Marshall D. Becker, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides, skins, pelts, and pieces therefrom* (except commodities in bulk), from the facilities of Iowa Beef Processors, Inc. at or near Dakota City, NE, to points in AL, AR, CA, GA, KS, LA, MS, MO, NV, NC, OR, SC, WA; and the ports of entry on the International Boundary Line between the U.S. and Canada located in ID, MN, MT, MI, NY, ND, and WA. Restriction: Restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations (except for export traffic).

NOTE.—Hearing site: Sioux City, IA, or Omaha, NE. Common control may be involved.

No. MC 124211 (Sub-No. 318F), filed February 22, 1978). Applicant: HILT TRUCK LINE, INC., P.O. Box 988, D.T.S., Omaha, NE 68101. Applicant's representative: Thomas L. Hilt (same address as applicant). Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: (1) *Cellular or Fiberglass Burial Vaults, and Caskets;* and (2) *such commodities* as are used in the manufacture, distribution, sale, and installation of the commodities described in (1) above, except commodities in bulk, between points in the United States (except AK and HI).

NOTE.—Common control may be involved. If oral hearing is deemed necessary, applicant requests it be held at Omaha, NE or Washington, DC.

No. MC 124947 (Sub-No. 104F), filed March 22, 1978. Applicant: MACHINERY TRANSPORTS, INC., 1945 South Redwood Road, Salt Lake City, UT 84104. Applicant's representative: David J. Lister, 1945 South Redwood Road, Salt Lake City, UT 84104. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting *pipe, boiler tubing and fabricated steel pipe, boilers and boiler parts* (valves), *coal crusher feeders and burners, fabricated steel weldments, steel castings and steel plate*, (except in bulk), from the facilities of Riley Stoker Corp., located at Erie, PA and Sapulpa, OK, to points in the United States (except AK and HI).

NOTE.—Common control may be involved. Hearing: April 25, 1978 at 9:30 a.m. local

time, at the Office of the Interstate Commerce Commission, Washington, DC.

No. MC 125433 (Sub-No. 143F), filed February 17, 1978. Applicant: F-B TRUCK LINE CO., a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Applicant's representative: David J. Lister, 1945 South Redwood Road, Salt Lake City, UT 84104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *agricultural parts and implements*, except in bulk, from Clearfield, UT to points in the United States (excluding AK and HI).

NOTE.—Common control may be involved. (Hearing: Salt Lake City, UT.)

No. MC 125433 (Sub-No. 144F), filed February 23, 1978. Applicant: F-B TRUCK LINE CO., a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Applicant's representative: David J. Lister, 1945 South Redwood Road, Salt Lake City, UT 84104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *racks, cable*, underground, iron or steel (knocked down), *cable, racks and parts* thereof (except in bulk), from Montebello, CA, to points in the United States, (excluding AK and HI).

NOTE.—Common control may be involved. (Hearing: Los Angeles, CA).

No. MC 125996 (Sub-No. 56F), filed February 21, 1978. Applicant: ROAD RUNNER TRUCKING, INC., P.O. Box 37491, 13080 Renfro Circle, Omaha, NE 68137. Applicant's representative: Floyd F. Knutson (same address as applicant). Authority sought to operate as a *common carrier* over irregular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment). From: Points in the States of CA, OR, and WA. To: Points in the States of CO, IL, IN, IA, KS, MN, MO, NE, ND, SD, and WI. Restriction: Restricted to the transportation of shipments moving on freight forwarder bills of lading under Part IV of the Interstate Commerce Act, and further restricted to traffic originating in the named origins and destined to the named destinations.

NOTE.—If an oral hearing is deemed necessary, Applicant requests it be held in Los Angeles, CA.

No. MC 126118 (Sub-No. 65F), filed February 27, 1978. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, NE 68501. Applicant's representative: Duane W. Acklie, P.O. Box 81228, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wine and beverages*, from CA to CT, DE, IL, IN, IA, KS, KY, MD, MI, MN, MO, NE, NH, NJ, NY, NC, OH, OK, PA, RI, TN, VA, WV, WI, and DC.

NOTE.—Applicant holds contract carrier authority in No. MC-128375 and subs thereunder, therefore dual operations may be involved. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at San Francisco, CA or Los Angeles, CA.

No. MC 126822 (Sub-No. 44F), filed February 21, 1978. Applicant: WESTPORT TRUCKING CO., a Corporation, 812 South Silver, P.O. Box 401, Paola, KS 66071. Applicant's representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. Authority is sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: *Hides, skins* and *pelts*, and pieces therefrom (except commodities in bulk) from the hide plant of Iowa Beef Processors, Inc., at or near Dakota City, NE, to points in CA, DE, IL, IN, KY, ME, MD, MA, MI, MN, NV, NH, NJ, NY, NC, OH, PA, SC, VT, VA, WV, WI, and the ports of entry on the International Boundary Line between the United States and Canada located in ID, MI, MN, MT, NY, ND, and WA, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations except for export traffic.

NOTE.—Hearing site: Sioux City, IA or Omaha, NE.

No. MC 127042 (Sub-No. 202) (correction), filed Janauary 26, 1978 published in the FEDERAL REGISTER issue of March 9, 1978 as "MC 17042 Sub 202," and republished this issue. Applicant: HAGEN, INC., P.O. Box 98—Leeds Station, Sioux City, IA 51108. Applicant's representative: Robert G. Tessar (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal Feed Supplement*, (except in bulk), from the facilities utilized by Dawe's Laboratory at or near Chicago Heights, IL, to points in AZ, AR, CA, and TX.

NOTE.—The purpose of this republication is to show correct docket number that was incorrectly published in the FEDERAL REGISTER. If a hearing is deemed necessary applicant requests it be held at Chicago, IL.

No. MC 127042 (Sub-No. 206F), filed February 21, 1978. Applicant: HAGEN, INC., P.O. Box 98-Leeds Station, Sioux City, IA 51108. Applicant's representative: Robert G. Tessar (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals, dry cleaning and janitorial supplies and materials;* and *supplies used in the manufacture and distribution of such commodities*, (except in bulk), (1) From Wichita and Lawrence, KS; Rothchild, Greenbay, Eau Claire, Milwaukee, Monticello, and Madison, WI; Wyandotte, Ludington, and Muskegon, MI; Mosher and St. Louis, MO; Minneapolis, MN; Gabbs, NV; Mapleton, Peoria, Chicago, Ringwood, and Ottawa, IL; Sweetwater County, WY; Texas City, Seadrift, and Brownsville, TX, Boron and Los Angeles, CA; and points in WA to points in MT, ND, SD and WY; and (2) From points in WA and Los Angeles, CA; to points in UT; and CO.

NOTE.—If a hearing is deemed necessary, applicant requests it be held in Helena, MT.

No. MC 127580 (Sub-No. 6F), filed February 17, 1978. Applicant: H. P. HALE, P.O. Box 177, Roswell, NM 88201. Applicant's representative: D. Paul Stafford, Winkle and Wells, a professional corporation, Suite 1125 Exchange Park, P.O. Box 45538, Dallas, TX 75245. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, plywood, particle board, impregnated sheathing* and *sheetrock*, between points in the States of AZ, AR, NM, LA, OK and TX, under a continuing contract or contracts with Dodson Wholesale Lumber Co., Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Santa Fe, NM or Dallas, TX.

No. MC 127840 (Sub-No. 64F), filed February 21, 1978. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, P.O. 382, Lansing, IL 60438. Applicant's representative: William H. Towle, 180 North LaSalle Street, Suite 3520, Chicago, IL 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit* and *citrus juices* and *concentrates thereof*, in bulk, in tank vehicles, from Frostproof, FL, to Plymouth, IN.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, IL.

No. MC 128273 (Sub-No. 288F), filed February 21, 1978. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Applicant's representative: Elden Corban (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pulpboard or fibreboard products, containers, container ends* and *sealing machines*, from the plantsites and storage facilities of The Mead Corp. located at or near Avondale, GA, to points in AR, MN, and MO, and points in and west of ND, SD, NE, KS, OK, and TX (except AK and HI).

NOTE.—If hearing is deemed necessary, applicant requests it be held at Dayton, OH or Washington, DC.

No. MC 129645 (Sub-No. 70F), filed February 23, 1978. Applicant: BASIL

J. SMEESTER and JOSEPH G. SMEESTER, a partnership, d.b.a. Smeester Brothers Trucking, 1330 South Jackson Street, Iron Mountain, MI, 49801. Applicant's representative: John M. Nader, Route 3, Box 4, Bowling Green, KY, 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood fiberboard* (except commodities in bulk), from the facilities of Allied International, Inc., located at or near Burns Harbor, IN to points in IL (except the Chicago, IL Commercial Zone, as defined by the Commission), IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, PA, SD, TN, WV, and WI.

NOTE.—Hearing site: Chicago, IL or Milwaukee, WI.

No. MC 133154, (Sub-No. 7F), filed February 23, 1978. Applicant: BELL TRANSPORT CO., 16036 Valley Boulevard, Fontana, CA 92335. Applicant's representative: Jerry Michael, 16036 Valley Boulevard, Fontana, CA 92335. Authority sought to operate as *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plumbers goods* from the plantsite and warehouse facilities of Norris Industries located at or near City of Industry, CA, to points in CA, AZ, and NV, under a continuing contract, or contracts with Norris Industries.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at San Francisco, CA.

No. MC 133542 (Sub-No. 13F), filed February 21, 1978. Applicant: FLOYD WILD, INC., P.O. Box 91, Marshall, MN 56258. Applicant's representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. Authority sought to operate as a *contract carrier* by motor vehicle, over irregular routes, transporting: *Malt beverages* from Milwaukee, WI, to Marshall, MN, under continuing contract or contracts with Lake Beverage Co., Marshall, MN.

NOTE.—Hearing site: Minneapolis or St. Paul, MN.

No. MC 134235 (Sub-No. 6F), filed February 21, 1978. Applicant: KUHNLE BROTHERS, INC., P.O. Box 128, Chagrin Falls, OH 44022. Applicant's representative: Kenneth T. Johnson, Bankers Trust Building, Jamestown, NY 14701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products*, in bulk, from Silver Springs, Watkins Glen, and the Town of Reading (Schuyler County), NY, to points in ME, NH, VT, MA, RI, CT, NY, PA, NJ, DE, MD, VA, WV, OH, IN, DC, and the Lower Peninsula of MI.

NOTE.—Applicant holds contract carrier authority in MC 138194, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Buffalo, NY.

No. MC 134452 (Sub-No. 5F), filed February 21, 1978. Applicant: EUREKA CARTAGE CO., INC., 5821 West Ogden Avenue, Cicero, IL 60650. Applicant's representative: Paul R. Bergant, 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Mufflers;* (2) *parts and accessories for mufflers*, from Hartford, WI to Chicago, IL, under a continuing contract or contracts with Midas International Corp.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, IL.

No. MC 135235 (Sub-No. 6F), filed February 17, 1978. Applicant: LOMA CARTAGE, INC., 11359 Franklin Avenue, Franklin Park, IL 60131. Applicant's representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Floor covering and materials and supplies used in the installation of floor covering* (except commodities in bulk), between points in Cook, Lake, and DuPage Counties, IL, on the one hand, and, on the other, points in Green, Calumet, and Waukesha Counties, WI, and Porter, LaPorte, St. Joseph, Elkhart, Starke, Marshall, and Kosciusko Counties, IN.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Chicago, IL.

No. MC 135385 (Sub-No. 5F), filed February 23, 1978. Applicant: J. C. BANGERTER & SONS, INC., 1265 North Main Street, Bountiful, UT 84010. Applicant's representatives: Zar E. Hayes, Suite 1200, 310 South Main Street, Salt Lake City, UT 84101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, and chain grocers, from the warehouses of Smith Management Corp. at Layton, UT, and its division, Intermountain Souvalls, at Salt Lake City, UT, to Albuquerque, NM, under a continuing contract, or contracts, with Smith's Management Corp.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at Salt Lake City, UT.

No. MC 135874 (Sub-No. 100F), filed February 23, 1978. Applicant: LTL PERISHABLES, INC., 550 East 5th Street South, So. St. Paul, MN 55075. Applicant's representative: K. O. Petrick (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in vehicles equipped with mechanical refrigeration (except commodities in bulk), from the facilities of Kraft, Inc., at New Ulm, MN, to points in CT, PA, VA, DE, DC, ME, MD, MA, NH, NY, NJ, RI, VT, OH, IN, MI, WV, KY, IL, ND, SD, NE, IA, MO, and WI.

Hearing site: Minneapolis-St. Paul, MN, or Chicago, IL. Common control may be involved.

No. MC 135982 (Sub-No. 18F), filed February 16, 1978. Applicant: S. L. HARRIS, d.b.a. P.B.I., P.O. Box 7130, Longview, TX 75601. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers* from the plantsite and storage facilities of Midland Glass Co. at or near Warner Robins, GA, to Alamance, Caswell, Chatham, Davidson, Davie, Durham, Forsyth, Guilford, Orange, Person, Randolph, Rockingham, Stokes, Surry and Yadkin Counties, NC; and Bedford, Campbell, Carroll, Floyd, Franklin, Halifax, Henry, Montgomery, Patrick, Pittsylvania, Pulaski, and Roanoke Counties, VA.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at either Atlanta, GA, or Dallas, TX.

No. MC 136987 (Sub-No. 19F), filed February 21, 1978. Applicant: REMINGTON FREIGHT LINES, INC., Box 315, U.S. 24 West, Remington, IN 47977. Applicant's representative: Warren C. Moberly, 777 Chamber of Commerce Building, Indianapolis, IN 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cocoa powder*, in bags, and pallets on exchange, from Camden and Glassboro, NJ, to all points and places in IL, WI, IN, OH, MN; and Waverly, Sibley, and Sioux City, IA; Kansas City, KS; St. Louis, MO; Denver, CO; Louisville, KY; Oakland, Los Angeles, and Burlingame, CA, under a continuing contract or contracts with ICP Cocoa, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at either Indianapolis, IN, or Washington, DC.

No. MC 138308 (Sub-No. 42F), filed February 21, 1978. Applicant: KLM, INC., 2102 Old Brandon Road, P.O. Box 6098, Jackson, MS 39208. Applicant's representative: Donald B. Morrison, 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Telephones, telephone parts, and housings, electrical cable, or wire, and printed paper forms*, from the facilities of GTE Automatic Electric, Inc., at or near Huntsville, AL, to Pomona, CA; Northlake, IL; Garland, TX; Everett, WA, and the port of entry on the international boundary line at or near

Sweetgrass, MT; (2) *telephones, telephone parts, telephone switchboards, and switchboard parts, electric cable, or wire, and cable racks, teletypewriters, and parts thereof, and printed paper forms,* from the facilities of GTE Automatic Electric, Inc., at or near Northlake, IL, to Mira Loma and Pomona, CA.

NOTE.—Applicant holds motor contract authority in No. MC 128592 and sub numbers thereunder, therefore dual operations may be involved. (Hearing site: Jackson, MS, or Chicago, IL.)

No. MC 138313 (Sub-No. 32F), filed February 17, 1978. Applicant: BUILDERS TRANSPORT, INC., 409 14th Street SW., Great Falls, MT 59404. Applicant's representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Bentonite clay and lignite coal,* treated and untreated, (1) from the facilities of American Colloid Co. in Crook County, WY, to MT, ID, WA, OR, and CA; and (2) from the facilities of American Colloid Co. in Crook County, WY, to international ports of entry on the United States-Canada boundary line located in ND, restricted to traffic moving in foreign commerce. Hearing site: Washington, DC.

No. MC 138505 (Sub-No. 4F), filed February 17, 1978. Applicant: METROPOLITAN CONTRACT SERVICES, INC., 9225 Katy Freeway, Suite 110, Houston, TX 77024. Applicant's representative: John H. Lewis, The 1650 Grant Street Building, Denver, CO 80203. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by retail department stores,* between Denver, CO, and Cheyenne, WY, restricted to shipments both originating and terminating at the facilities of Montgomery Ward, Inc., under a continuing contract or contracts with Montgomery Ward, Inc. Hearing sites: Denver, CO, or Cheyenne, WY.

No. MC 138875 (Sub-No. 80F), filed February 21, 1978. Applicant: SHOEMAKER TRUCKING CO., a corporation, 11900 Franklin Road, Boise, ID 83705. Applicant's representative: F. L. Sigloh, 11900 Franklin Road, Boise, ID 83705. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *China toilets,* from Laredo, TX, to points in ID and OR

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Boise, ID, or Portland, OR.

No. MC 139206 (Sub-No. 10F), filed February 21, 1978. Applicant: F.M.S. Transportation, Inc., Box 1597, 2564 Harley Drive, Maryland Heights, MD 63043. Applicant's representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Castings, patterns, and molds, and parts, and accessories* therefor; and (2) *materials, equipment, and supplies* used in the manufacture, processing, sale, molding, assembly, transportation, repair, and distribution of the commodities in (1) above (except commodities in bulk), between Worchester, MA, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to transportation of traffic moving under a continuing contract, or contracts, with Chromalloy American Corp.

NOTE.—(1) Applicant states that it is a commonly controlled contract carrier for Chromalloy American Corp. and the purpose of this application is to allow shipper to substitute applicant's contract carrier operations for the shipper's private carriage. Applicant states it already holds authority to transport traffic between thirteen (13) other locations of shipper, on the one hand, and, on the other, points in the United States (except AK and HI); (2) applicant further states that common control and dual operations may be involved. Common control and dual operations were approved in Docket No. MC-F-12514. If a hearing is deemed necessary, it is requested in St. Louis, MO.

No. MC 140364 (Sub-No. 2F), filed February 21, 1978. Applicant: ARMOUR FOOD EXPRESS CO., a corporation, 222 South 72nd Street, Omaha, NE 68114. Applicant's representative: Robert D. Rierson, 16th Floor, Greyhound Tower, Phoenix, AZ 85077. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Such commodities* as are dealt in by wholesale, retail, and chain grocery food business houses from the warehouse facilities of Milliken-Tomlinson Co. at Portland, ME, to points in ME, NH, VT, and MA, under a continuing contract or contracts with Milliken-Tomlinson Co. located at Portland, ME, and (2) meat, meat byproducts, and articles distributed by meat packinghouses as described in sections A, B, and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk) from the warehouse facilities of Milliken-Tomlinson Co. and Armour Food Co. (a Division of Armour & Co.) at Portland, ME, to points in ME, NH, VT, and MA, under a continuing contract or contracts with Milliken-Tomlinson Co. and Armour & Co.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests that it be held at Portland, ME.

No. MC 141624 (Sub-No. 3F), filed February 17, 1978. Applicant: SCOTT BANKS TRUCKING, INC., U.S. Highway 19/23, P.O. Box 352, Candler, NC 28715. Applicant's representative: George W. Clapp, 109 Hartsville Street, P.O. Box 836, Taylors, SC 29687. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Crushed olivine stone,* in bulk, in dump vehicles, from points in Avery, Jackson, Mitchell, and Yancey Counties, NC, to points in AL, GA, IL, IN, KY, LA, MI, MS, NJ, NY, OH, PA, SC, TN, VA, and WV.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held in Asheville, NC, or Chicago, IL.

No. MC 141804 (Sub-No. 102F), filed February 23, 1978. Applicant: WESTERN EXPRESS, division of Interstate Rental, Inc., P.O. Box 422, Goodlettsville, TN 37072. Applicant's representative: Frederick J. Coffman, P.O. Box 422, Goodlettsville, TN 37072. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Individually portion control packaged foodstuffs,* not frozen (except meat, meat products, and meat byproducts) from Chatsworth, CA, to points in MI, IN, PA, IL, OH, KY, and Atlanta, GA. (Hearing site: Los Angeles, CA, or Nashville, TN.)

No. MC 143443 (Sub-No. 1F), filed February 21, 1978. Applicant: GARY L. McCALLISTER and MONTE A. McCALLISTER, d.b.a. McCallister Brothers, P.O. Box 1911, Rock Springs, WY 82901. Applicant's representative: Ward A. White, P.O. Box 563, Cheyenne, WY 82001. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Bentonite, barite, drilling compounds and completion equipment, materials,* in sacks and in bulk; and (2) *machinery, equipment, materials, and supplies* used in, or in connection, with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum, their products and byproducts (except complete drilling rigs), between points in Sweetwater, Carbon, Uinta, Lincoln, and Teton Counties, WY, on the one hand, and, on the other (1) points in CO located west of U.S. Hwy 85 and north of Interstate Hwy 70, U.S. Hwy 6-24; and (2) points in Daggett, Summit, Duchesne, Uintah, Carbon, Grand, Sanpete, Utah, Wasatch, Salt Lake, Davis, Morgan, Weber, Rich, Cache, Toole, Box Elder, and Emory Counties, UT; and (3) points in ID.

NOTE.—Hearing site: Cheyenne, WY, Salt Lake City, UT, Denver, CO. Common control may be involved.

No. MC 143601 (Sub-No. 1F), filed February 21, 1978. Applicant: TRANS

COASTAL CORP., P.O. Box 116W, 10 Frankwood Drive, Winslow, ME 04902. Applicant's representative: Peter L. Murray, 30 Exchange Street, Portland, ME 04101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Antique furniture, lamp fixtures, lead glass windows and mirrors, glassware, clocks, crockery, and picture frames*, from warehouse of Oregon Trail Antiques, Inc., at Fairfield, ME, to warehouse of Oregon Trail Antiques, Inc. at Venita, OR. Under continuing contract or contracts with Oregon Trail Antiques, Inc.

NOTE.—Hearing site, Portland, ME, or Boston, MA.

No. MC 143763 (Sub-No. 2F), filed February 21, 1978. Applicant: JERRY ZEIG, d.b.a. JERRY'S TOWING, 4727 North Cliff Avenue, Sioux Falls, SD 57103. Applicant's representative: M. Mark Menard, P.O. Box 480, Sioux Falls, SD 57101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked, disabled, replacement, stolen or repossessed vehicles* in truckaway service by use of wrecker and flatbed or lo-boy equipment only. Between points in SD, ND, IL, IA, MN, NE, KS, WI, MT, MO, and WY.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at either Sioux Falls, SD or Sioux City, IA.

No. MC 144083 (Sub-No. 2F), filed February 21, 1978. Applicant: RALPH WALKER, INC., P.O. Box 3222, Jackson, MS 39209. Applicant's representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture* from the facilities of Shannon Chair Co. at Houston, MS, to points in AZ, CA, OR, WA, and UT.

NOTE.—Applicant holds motor contract carrier permits in MC 123064 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Jackson or Tupelo, MS.

No. MC 144329 F, filed February 16, 1978. Applicant: JOE RIDDLE AND CHARLES RIDDLE, a partnership, d.b.a. RIDDLE TRUCKING CO., Route 6, Tazewell, TN 37879. Applicant's representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in bulk, in dump vehicles, from Bell, Clay, Harlan, Knox, Laurel, and Whitley Counties, KY, and Anderson, Campbell, Claiborne, Grainger, Morgan, Scott, and Union Counties, TN, to points in NC, SC, Butler and Hamilton Counties, OH, and Lawrence County, AL.

NOTE.—Applicant holds contract authority in MC 144019 and subs thereunder and therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held in Washington, DC.

By the Commission.

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

[FR Doc. 78-9014 Filed 4-5-78; 8:45 am]

[7035-01]

[Volume No. 78]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), RAILROAD ABANDONMENTS, ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS

MARCH 29, 1978.

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

All pleadings and documents must clearly specify the suffix (e.g. M1 F, M2 F) numbers where the docket is so identified in this notice.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this notice. Such protests shall comply with Special Rule 247(e) of the Commission's General Rules of Practice (49 CFR 1100.247)[1] and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

No. MC 55889 (Sub-No. 40) (M2), filed January 20, 1978. (notice of filing of petition to delete restrictions.) Petitioner: AAA COOPER TRANSPORTATION, a corporation, P.O. Box 2207, Dothan, AL 36301. Petitioner's representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Petitioner holds a motor *common carrier* certificate in No. MC 55889 (Sub-No. 40) issued April 27, 1976 authorizing transportation, over regular routes, of *General commodities* (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), (I) Between New Orleans, LA, and Jacksonville, FL, serving Mobile, AL as an intermediate point: From New Orleans over U.S. Hwy 90 (also over Interstate Hwy 10) to Jacksonville, and return over the same route; (II) Between Thomasville, GA, and St. Petersburg, FL: From Thomasville, over U.S. Hwy 19 to St. Petersburg, and return over the same route; (III) Between Albany, GA, and Miami, FL, serving Tifton, GA, as an intermediate point: From Albany over U.S. Hwy 82 to Tifton, GA, then over Interstate Hwy 75 to Tampa, FL (also from Tifton over U.S. Hwy 41 to Tampa), then over U.S. Hwy 41 to Miami, and return over the same route; (IV) Between Bainbridge, GA, and Miami, FL: From Bainbridge over U.S. Hwy 27 to Miami, and return over the same route: (V) Between junction Interstate Hwy 75 and FL Turnpike at or near Wildwood, FL, and Miami, FL: From junction Interstate Hwy 75 over FL Turnpike at or near Wildwood, FL to Miami, and return over the same route; (VI) Between Naples, FL, and Fort Lauderdale, FL: From Naples over FL Hwy 84 to Fort Lauderdale, and return over the same route; (VII) Between Jacksonville, FL, and Miami, FL: From Jacksonville, over U.S. Hwy 1 (also over Interstate Hwy 95) to Miami, and return over the same route; (VIII) Between Baldwin, FL, and junction FL Turnpike at or near Wildwood, FL: From Baldwin over U.S. Hwy 301 to junction FL Turnpike at or near Wildwood, FL, and return over the same route; (IX) Between Daytona Beach, FL, and St. Petersburg, FL: From Daytona Beach over U.S. Hwy 92 (also over Interstate Hwy 4) to St. Petersburg, and return over the same route; (X) Between Tampa, FL, and junction FL Turnpike at or near Yeehaw Junction, FL: From Tampa over FL Hwy 60 to junction FL Turnpike at or near Yeehaw Junction, FL, and return over the same route; (XI) Between Geneva, AL, and Dothan, AL, serving no intermediate points: From Geneva over AL Hwy 52 to Dothan, and return over the same route. Serving in connection with routes (I) through (X) above, (1) all intermediate points in FL, except those in connection with Route (I) above, and (2) all other points in FL on and east of the Apalachicola River as off-route points. Restrictions: The operations authorized hereinabove are restricted as follows: (a) Against service at intermediate points in AL and GA (except Tifton, GA, as authorized in III above. (b) Against the transportation of traffic either (i) originating at points in the commercial zone of Birmingham, AL, points in the commercial zone of Montgomery, AL, and points in the commercial zone of Columbus, GA, and destined to those points in FL described in (1) and (2) above, or (ii) originating at those points in FL described in (1) and (2) above and destined to points in the commercial zone of Birmingham, AL, points in the commercial zone of

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Montgomery, AL, and points in the commercial zone of Columbus, GA (c) Against the transportation of traffic either (i) originating at points in the commercial zone of Dothan, AL, points in the commercial zone of Tifton, GA, and points in GA which applicant holds authority to serve under heretofore issued operating rights and destined to Tampa, FL, and the Tampa, FL, commercial zone, and to points in that portion of FL on and west of Interstate Hwy 75 extending between the FL-GA State line and Gainesville, FL, and those points on and north of FL Hwy 24 extending between Gainesville, FL, and Cedar Key, FL, or (ii) originating at points in that portion of FL described immediately above in (c)(i) and destined to points in the commercial zone of Dothan, AL, points in the commercial zone of Tifton, GA, and points in GA which applicant holds authority to serve under heretofore issued operating rights. (d) Service at Mobile, AL, restricted to the transportation of shipments moving from or to points in (1) and (2) above, except no service authorized to those FL points described in (c) above. (e) Service over Route (XI) restricted to the transportation of shipments moving from or to points in FL described in (1) and (2) above in connection with service authorized in routes (I) through (X) above. By the instant petition, petitioner seeks to modify the above authority by deleting the restriction in (c) in its entirity and that portion of the restriction in (d) following the word "above", and by inserting the phrase "west of the Apalachicola River" between "except those" and "in connection" in the service authorization paragraph following Route (XI).

NOTE.—Petitioner has pending No. MC 55889 (Sub-No. 40) (M1) Petition for Modification, filed July 20, 1977, and published in the FEDERAL REGISTER issue of August 25, 1977.

No. MC 77016 (Sub-No. 15) (M1F) (notice of filing of petition to broaden commodity description), filed February 22, 1978. Petitioner: BUDIG TRUCKING CO., a corporation, 1100 Gest Street, Cincinnati, OH 45203. Petitioner's representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, MO 63101. Petitioner holds a motor *common carrier* Certificate in No. MC 77016 (Sub-No. 15), issued April 27, 1977, authorizing transportation, as pertinent, over irregular routes, of: *Petroleum products*, from Wood River and Roxana, IL, to Cincinnati, OH and points in that part of OH within 125 miles of Cincinnati. By the instant petition, petitioner seeks to broaden the commodity description to read: *Petroleum products* and such commodities as are usually found in automotive service stations, when transported in mixed loads with petroleum products and byproducts, and rejected shipments on return.

No. MC 108449 (Sub-No. 292) (M1F) (Notice of Filing of Petition to Remove Restrictions), filed February 23, 1978. Petitioner: INDIANHEAD TRUCK LINE, INC., 1947 West County Road C, St. Paul, MN 55113. Petitioner's representative: W. A. Myllenbeck, P.O. Box 3355, St. Paul, MN 55165. Petitioner holds a motor *common carrier* Certificate in No. MC 108449 (Sub-No. 292), issued March 16, 1970, authorizing transportation over regular routes, of as pertinent: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between Fort Wayne, IN, and points in MI and OH, serving all intermediate points and the off-route points within 5 miles of Fort Wayne, IN and Baer Field, IN, as follows: from Fort Wayne, over IN Hwy 3 to Kendallville, IN, then over U.S. Hwy 6 to junction IN Hwy 9, then over IN Hwy 9 to the IN-MI State line, then over MI Hwy 66 (formerly MI Hwy 78), to Sturgis, MI, then over U.S. Hwy 12 (formerly U.S. Hwy 112) to junction U.S. Hwy 131, then over U.S. Hwy 131 to Kalamazoo, MI and return over the same route. From Fort Wayne over U.S. Hwy 30 via Zulu, IN to Delphos, OH (also from Zulu over U.S. Hwy 30 to junction IN Hwy 101, then over IN Hwy 101 via Monroeville to junction unnumbered Hwy, then over unnumbered Hwy via Dixon and Convoy, OH to junction U.S. Hwy 30, then over U.S. Hwy 30 to Delphos), and then over U.S. Hwy 30S to Lima, OH and return over the same routes. From Fort Wayne over U.S. Hwy 27 to Decatur, IN, then over U.S. Hwy 224 to Van Wert, OH, then over OH Hwy 116 to junction OH Hwy 117, then over OH Hwy 117 to Lima, OH, and return over the same route. From Fort Wayne to Decatur, IN as specified above, then over U.S. Hwy 33 to St. Marys, OH, and return over the same route. Between points in OH, serving all intermediate points, as follows: From junction OH Hwy 116 and unnumbered Hwy over unnumbered Hwy via Middle point to junction U.S. Hwy 30, and return over the same route. From Delphos over OH Hwy 66 to St. Marys, then over OH Hwy 29 to Celina, then over U.S. Hwy 127 to junction OH Hwy 219, and then over OH Hwy 219 to Coldwater, and return over the same route. From Van Wert over OH Hwy 118 to Rockford, and return over the same route. From Ohio City over unnumbered Hwy to junction U.S. Hwy 127, then over U.S. Hwy 127 to junction OH Hwy 81, then over OH Hwy 81 via Elgin to Converse, then over OH Hwy 116 to Monticello, then return over OH Hwy 116 to junction OH Hwy 117, then over OH Hwy 117 to junction OH Hwy 707, then over OH Hwy 707 via Mendon to junction U.S. Hwy 127, then over U.S. Hwy 127 to Mercer, and return over the same route. From Willshire over OH Hwy 49 to Wren, and return over the same route. Between Sturgis, MI and Coldwater, MI, serving no intermediate points, from Sturgis over U.S. Hwy 12 (formerly U.S. Hwy 112) to Coldwater, and return over the same route. Between Kalamazoo, MI and Lansing, MI, serving all intermediate points and the off-route point of Byron Center, MI: From Kalamazoo over U.S. Hwy 131 to Grand Rapids, MI, then over unnumbered Hwy (formerly portion of U.S. Hwy 16), to junction Interstate Hwy 96 (formerly portion U.S. Hwy 16), then over Interstate Hwy 96 to Lansing, and return over the same route. Between Plainwell, MI and Holland, MI, serving all intermediate points: From Plainwell over MI Hwy 89 to Allegan, MI and then over MI Hwy 40 to Holland and return over the same route. Restriction: Service over the 12 routes next above is restricted against service between Fort Way, Corunna, and Angola, IN, and between Fort Wayne, IN and Coldwater, Lansing and Somerset, MI. Between Chicago, IL and junction U.S. Hwy 6 and IN Hwy 9, near Kendallville, IN, serving no intermediate points, and with service at junction U.S. Hwys 6 and 41 and junction U.S. Hwys 6 and 33 for the purpose of joinder only with carrier's authorized alternate routes herein: From Chicago over U.S. Hwy 41 to junction U.S. Hwy 6, then over U.S. Hwy 6 to junction IN Hwy 9, and return over the same route. Between Chicago, IL and junction U.S. Hwys 6 and 41, serving no intermediate points, and with service at junction U.S. Hwy 6 and IL Hwy 1 for the purpose of joinder only with an authorized alternate route herein, and service at junction U.S. Hwys 6 and 41 is restricted to joinder only with carrier's authorized alternate routes herein and the regular route described immediately above: From Chicago over IL Hwy 1 to junction U.S. Hwy 6, then over U.S. Hwy 6 to junction U.S. Hwy 41, and return over the same route. Between Chicago, IL and La Grange, IN, serving no intermediate points, as an alternate route for operating convenience only, in connection with the 2 next above-described routes: From Chicago over U.S. Hwy 20 to junction IN Hwy 2, then over IN Hwy 2 to South Bend, IN, and then over U.S. Hwy 20 to La Grange, and return over the same route. Restriction: The service authorized over the the 3 next above-described routes is restricted against any traffic moving between Chicage. IL, on the one hand, and, on the other, Grand Rapids, Holland, Kalamazoo,

and Three Rivers, MI. By the instant petition, petitioner seeks to delete the two restrictions which read: "Service over the 12 routes next above is restricted against service between Fort Wayne, Corunna, and Angola, IN, and between Fort Wayne, IN and Coldwater, Lansing and Somerset, MI" and "The service authorized over the 3 next above-described routes is restricted against any traffic moving between Chicago, IL, on the one hand, and, on the other, Grand Rapids, Holland, Kalamazoo, and Three Rivers, MI".

No MC 114632 (Sub-No. 103G) M1 (notice of filing of petition to modify commodity description), filed January 23, 1978. Petitioner: APPLE LINES, INC., 212 Southwest Second Street, P.O. Box 287, Madison, SD 57024. Petitioner's representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. Petitioner holds a motor *common carrier* certificate in No. MC 114632 (Sub-No. 103G), issued September 21, 1977, authorizing transportation, over irregular routes, of: *Iron and steel prefabricated structural components,* from Chicago, IL, and points in Porter County, IN, to points in KS. By the instant petition, petitioner seeks to modify its commodity description by changing it to read: *Iron and steel articles,* from Chicago, IL, and points in Porter County, IN, to points in KS.

No. MC 116300 (Sub-No. 14), (M1 F), (notice of filing of petition to add destination State), filed February 23, 1978. Petitioner: NANCE & COLLUMS, INC., P.O. Drawer J, Ferwood, MS 39635. Petitioner's representative: Harold D. Miller, Jr., P.O. Box 22567, Jackson, MS 39205. Petitioner holds a motor *common carrier* certificate in No. MC 116300 (Sub-No. 14), issued March 21, 1975, authorizing transportation, over irregular routes, of, as pertinent: *Sugar,* in sacks and packages, (3)(a) from Gramercy, La, to points in AR, FL, GA, IL, IN, KS, KY, MO, NC, OH, SC, TN, TX, VA, and WV, and (3)(b) from Mathews, LA, to all destination points referred to in (3)(a) above, except TX and WV. By the instant petition, petitioner seeks to delete "except TX" from part (3)(b) above, thereby authorizing transportation form Mathews, LA, to points in AR, FL, GA, IL, IN, KS, KY, MO, NC, OH, SC, TN, TX, and VA.

No. MC 130223 (M1 F) (notice of filing of petition to delete restriction), filed February 8, 1978. Petitioner: PETER PAN WORLD TRAVEL, INC., 1778 Main Street, Springfield, MA 01103. Petitioner's representative: Charles A. Webb, Suite 600, 1250 Connecticut Avenue NW., Washington, DC 20036. Petitioner holds a *broker* license in MC 130223, issued September 23, 1977, authorizing arrangement of transportation for: *Passengers and their baggage,* in special and charter operations, in tour service, between points in the United States including AK and HI subject to the following restriction: "The operations authorized herein are restricted against the arranging of transportation of passengers and their baggage in tour service, beginning and ending at points in Berkshire, Hampden, and Hampshire Counties, MA, and extending to points in the United States including AK and HI." Petitioner is authorized to engage in the above-specified operations as a broker at Springfield, Northampton, Holyoke, and Amherst, MA. By the instant petition, petitioner seeks to modify the above authority by deleting the restriction.

No. MC 130223 (M2 F) (notice of filing of petition to add broker locations), filed February 8, 1978. Petitioner: PETER PAN WORLD TRAVEL, INC., 1778 Main St., Springfield, MA 01103. Petitioner's representative: Charles A. Webb, Suite 600, 1250 Connecticut Ave. NW., Washington, DC 20036. Petitioner holds a *broker* license in No. MC 130223, issued September 23, 1977, authorizing arrangement of transportation for passengers and their baggage, in special and charter operations, in tour service, between points in the United States including AK and HI, restricted against the arranging of transportation of passengers and their baggage in tours service, beginning and ending at points in Berkshire, Hampden, and Hampshire Counties, MA, and extending to points in the United States including AK and HI. Petitioner is authorized to engage in the above-specified operations as a broker at Springfield, Northampton, Holyoke, and Amherst, MA. By the instant petition, petitioner seeks to broaden authority so that it will be authorized to engage in the above-specified operations as a broker at the following four additional locations: Worchester and Boston, MA, Hartford, CT, and New York, NY.

No. MC 133099 (M1 F) (notice of filing of petition to delete restriction), filed February 2, 1978. Applicant: THE GLASGOW & DAVIS CO., a Corporation, Post Office Box 1717, Salisbury, MD 21801. Applicant's representative: Daniel B. Johnson, 4304 East-West Highway, Washington, DC 20014. Petitioner holds a motor *common carrier,* certificate in No. MC 133099 issued October 28, 1968, authorizing transportation over irregular routes of: *Agricultural commodity containers,* from Woodland, NC, and points within 15 miles thereof, to points in GA, FL, and SC (except from Murfeesboro, NC to points in FL. By the instant petition, petitioner seeks to delete the restriction from the certificate which precludes service from Murfreesboro, NC to points in FL.

No. MC 135684 (Sub-No. 18) (M1F) (notice of filing of petition to delete restriction), filed February 8, 1978. Petitioner: BASS TRANSPORTATION CO., INC., P.O. Box 391, Flemington, NJ 08822. Petitioner's representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Petitioner holds a motor *common carrier* certificate in No. MC 135684 (Sub-No. 18), issued December 21, 1977, authorizing, as pertinent, transportation, over irregular routes, of: (4) *Floor covering, rubber products, plastic, and plastic products* (except commodities in bulk), from points in Orange and Los Angeles Counties, CA to points in WA, OR, and CA; and (5) *returned shipments* of the commodities described in (4) above, from points in WA, OR, and CA to points in Orange and Los Angeles Counties, CA; (6) *tile, carpeting, rugs, and artificial turf,* from the facilities utilized by American Biltrite, Inc., at or near La Mirada, CA, to points in TX, ID, ND, SD, NE, KS, OK, WA, OR, AZ, CA, UT, NV, MT, WY, CO, and NM; and (7) *returned shipments* of the commodities described in (6) above, from points in the territory destination States described in (6) above to the plantsite and storage facilities of American Biltrite, Inc., at La Mirada, CA. Restriction: The authority described above is restricted to traffic originating at or destined to the facilities of American Biltrite, Inc. By the instant petition, petitioner seeks to modify the certificate to remove the restriction to American Biltrite facilities from the above-specified paragraphs.

Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this Federal Register notice. All pleadings and documents must clearly specify the "F" suffix where the docket is so identified in this notice. Such pleading shall comply with special rule 247(e) of the Commission's general rules of practice (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's repre-

sentative, or carrier if no representative is named.

No. MC 113678 (Sub-No. 644) (republication), filed November 15, 1976, published in the FEDERAL REGISTER issue of December 16, 1976, and republished this issue. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City (Denver), Applicant's representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. A Decision and Order of the Commission, Review Board Number 2, decided January 12, 1978, and served February 8, 1978, authorizes service, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, transporting: *Carpets and rugs,* (a) from Carlisle, PA, to points in IL, IN, IA, MI, MN, MO, ND, SD, OH, and WI and (b) from Mobile, AL, to points in AZ, CA, CO, ID, IL, IA, KS, MN, MO, NE, NV, NM, OK, OR, TX, UT, WA, WI, and WY. The purpose of this republication is to reflect applicant's actual grant of authority.

No. MC 126118 (Sub-No. 43) (republication), filed June 6, 1977, published in the FEDERAL REGISTER issue of July 14, 1977, and republished this issue. Applicant: CRETE CARRIERS CORP., P.O. Box 81225, Lincoln, NE 68501. Applicant's representative: Duane W. Acklie (same address as applicant). An Order of the Commission, Review Board Number 2, decided January 13, 1978, and served February 8, 1978, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Liquid cleaning compounds, floor wax, floor polishers, carpet washers, cleaning systems, and vacuum cleaner bags,* (a) between French Link, IN, on the one hand, and, on the other, points in the United States on and west of a line beginning at the mouth of the Mississippi River and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada (including AK, but excluding HI), and, (b) from points in the United States on and west of a line beginning at the mouth of the Mississippi River and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada (including AK, but excluding HI), to Castleton, IN, and (2) *materials and supplies used in the manufacture and distribution of the commodities named in* (1) above, from points in the United States on and west of a line beginning at the mouth of the Mississippi River and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada (including AK, but excluding HI), to French Link, IN; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to broaden the commodity and territorial description.

No. MC 128801 (Sub-No. 2) (republication), filed June 10, 1977, published in the FEDERAL REGISTER issue of August 4, 1977, and republished this issue. Applicant: RONALD SCHREINER, R.D. No. 1, Lebanon, PA 17042. Applicant's representative: John M. Musselman, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. An order of the Commission, Review Board No. 2, decided February 24, 1978, and served March 16, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *contract carrier,* over irregular routes, in the transportation of: *Nonferrous metals and alloys, and scrap nonferrous metal articles,* between Columbia, PA, on the one hand, and, on the other, points in the United States (except AK, HI, OR, NV, ID, MT, WY, UT, AZ, NM, ND, SD, OK, PA, and SC), under a continuing contract, or contracts, with Colonial Metals Co., of Columbia, PA; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity description.

No. MC 139420 (Sub-No. 19) (republication), filed August 22, 1977, published in the FEDERAL REGISTER issue of September 29, 1977, and republished this issue. Applicant: ART GREENBERG, d.b.a. CLACIER TRANSPORT, P.O. Box 428, Grand Forks, ND 58201. Applicant's representative: James B. Hovland, P.O. Box 428, 414 Gate City Building, Fargo, ND 58102. An order of the Commission, Review Board No. 2, decided January 25, 1978, and served February 10, 1978, finds that the present and future public convenience and necessity require operation by applicant in interstate or foreign commerce as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Matches and wooden articles,* from the facilities of Diamond International Corp., located at or near Cloquet, MN, to Reno, NV, Phoenix, AZ, Denver, CO, Salt Lake City, UT, Milwaukie, OR, and points in CA. The purpose of this republication is to broaden the commodity description by changing woodenware to wooden articles.

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with Section 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use a such authority to provide all or part of the service proposed), and shall specify with particularly the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protest not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if not representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(e)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL

REGISTER of a notice that the proceeding has been assigned for oral hearing.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 8214 (Sub-No. 4F), filed February 21, 1978. Applicant: PORT JERSEY TRANSPORTATION, 2 Colony Road, Jersey City, NJ 07305. Applicant's representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ 07076. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, and chain grocery and food business houses, *and equipment, materials, and supplies* used in the conduct of such business (except commodities in bulk), between the Port Jersey industrial complex, Jersey City, NJ, on the one hand, and, on the other, points in CT and PA.

NOTE.—Hearing site: New York, NY.

No. MC 22509 (Sub-No. 5F), filed February 27, 1978. Applicant: MISSOURI-NEBRASKA EXPRESS, INC., 5310 St. Joseph Avenue, St. Joseph, MO 64505. Applicant's representative: Harry Ross, 58 South Main Street, Winchester, KY 40391. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulation and insulation materials* (except commodities in bulk) from St. Joseph, MO, to points in AR, OK, KS, NE, MN, and points in IA on and west of U.S. Hwy 63.

NOTE.—Hearing site: Kansas City, MO.)

No. MC 25798 (Sub-No. 304F), filed February 21, 1978. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Applicant's representative: Tony G. Russell, P.O. Box 1186, Auburndale, FL 33823. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Merchandise dealt in by wholesale, retail, chain grocery, and food business houses* (except in bulk, in tank vehicles) in mechanically refrigerated equipment, from the facilities of Kraft, Inc., at Springfield, MO, to points in AL, FL, GA, LA, MS, NC, SC, TN, and VA.

NOTE.—If a hearing is deemed necessary applicant requests it be held at Kansas City, MO, Dallas, TX, or Tampa, FL. Common control may be involved. (Hearing site: Kansas City, MO.)

No. MC 52869 (Sub-No. 98F), filed February 24, 1978. Applicant: NORTHERN TANK LINE, a corporation, P.O. Box 970, Miles City, MT 59301. Applicant's representative: Michael E. Miller, 502 First National Bank Building, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, in interstate or foreign commerce, transporting: *Petroleum products*, in bulk, in tank vehicles, from points in Foster and Billings Counties, ND, to points in MN, MT, ND, SD, and WI.

NOTE.—If a hearing is deemed necessary, applicant requests it be at Billings, MT.

No. MC 59150 (Sub-No. 124F), filed February 24, 1978. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose Street, Jacksonville, FL 32206. Applicant's representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building stone, flagstone, and field stone*, from Cumberland County, TN to points in NC, SC, GA, AL, and FL.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Knoxville, TN.

No. MC 61231 (Sub-No. 119F), filed February 23, 1978. Applicant: EASTER ENTERPRISES, INC., doing business as ACE LINES, INC., P.O. Box 1351, Des Moines, IA 50305. Applicant's representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic, plastic articles, plastic pipe tubing, fittings, and connections, and materials, supplies, and accessories* used in the manufacture and installation thereof (except commodities in bulk), between the facilities of Robintech, Inc., at or near Grinnell, IA, on the one hand, and, on the other, points in AZ, AR, CO, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OH, OK, SD, TX, WI, and WY.

NOTE.—If a hearing is deemed necessary, applicant requests that the hearing be held at Des Moines, IA or Chicago, IL.

No. MC 61396 (Sub-No. 345F), filed February 24, 1978. Applicant: HERMAN BROC. INC., 2565 St. Marys Avenue, P.O. Box 189. Omaha, NE 68101. Applicant's representative: John E. Smith II, 2565 St. Marys Avenue, P.O. Box 189, Omaha, NE 68101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Helium*, in bulk, in tank vehicles, from the facilities of the U.S. Department of the Interior, Bureau of Mines, at or near Keyes, OK, to Chicago, IL.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, IL or Omaha, NE.

No. MC 71593 (Sub-No. 6F), filed February 24, 1978. Applicant: FORWARDERS TRANSPORT, INC., 1815 Front Street, Scotch Plains, NJ 07076. Applicant's representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ 07076. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between New York, NY, on the one hand, and, on the other, Memphis, TN, restricted to the transportation of shipments moving on freight forwarder bills of lading.

NOTE.—Hearing site: New York, NY.

No. MC 83539, (Sub-No. 481F), filed February 23, 1978. Applicant: C & H TRANSPORTATION CO., INC., 9757 Military Parkway, P.O. Box 270535, Dallas, TX 75227. Applicant's representative: Thomas E. James (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Precut logs, wood building material, and materials* for construction, insulation and erection thereof, from the plantsite of Real Log Homes in or near Missoula, MT to all points in the U.S. (except AK and HI).

NOTE.—Hearing site: (1) Denver, CO or (2) Washington, DC.

No. MC 103993 (Sub-No. 925F), filed February 27, 1978. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Applicant's representatives: Paul D. Borghesani, 28651 U.S. 20 West, Elkhart, IN 46515. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pipe, conduit, fittings, couplings, and materials, accessories, and supplies* used in the installation thereof, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, from (1) Geneva County, AL to points in MN, WI, IA, MO, AR, LA, TX, IL, IN, MI, OH, KY, TN, MS, GA, SC, NC, VA, WV, MD, DE, PA, NJ, and (2) from points in the above named states to points in Geneva County, AL.

NOTE.—Hearing site: Atlanta, GA.

No. MC 104123 (Sub-No. 82F), filed February 21, 1978. Applicant: JOHN SCHUTT, JR., INC., 665 River Road (Route 265) North Tonawanda, NY 14120. Applicant's representative: Paul F. Sullivan, 711 Washington Building, Washington, DC 20005. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: *Chloride producing systems and parts and accessories* therefor, between ports of entry in NY and MI on the international boundary line, between the United States and Canada on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic moving in foreign commerce and moving from or to the facilities of E. S. Fox, Ltd., Niagara Falls, ON, Canada.

NOTE.—Hearing site: Buffalo, NY.

No. MC 105566 (Sub-No. 162 F), filed February 14, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1119, Cape Girardeau, MO 63701. Applicant's representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: *Printed matter* from Kingport and New Canton, TN, to points in NV and UT.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Washington, DC.

No. MC 105566 (Sub-No. 163F), filed February 27, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., Post Office Box 1119, Cape Girardeau, MO, 63701. Applicant's representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: *Water treating and industrial process products*, except in bulk in tank or hopper vehicles, from the facilities of Nalco Chemical Co. in Chicago, IL to points in GA, MA, NJ, NY, and TX.

NOTE.—If a hearing is deemed necessary, applicant requests it be held in Chicago, IL or Washington, DC.

No. MC 105886 (Sub-No. 27F), filed February 23, 1978. Applicant: MARTIN TRUCKING, INC., East Poland Avenue, Bessemer, PA 16112. Applicant's representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes transporting: *Cement* from the facilities of Marquette Co., Neville Island, Neville Township, Allegheny County, PA to points in MD., NY, OH, and WV.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held in Washington, DC, Nashville, TN, or Pittsburgh, PA.

No. MC 106674 (Sub-No. 289F), filed February 21, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Applicant's representative: Jerry L. Johnson, P.O. Box 123, Remington, IN 47977. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Lime* (except in bulk) from the facilities of the United States Gypsum Co. at or near Genoa, OH to DE, IN, IL, KY, MD, MI, MO, NJ, NY, PA, VA, WV, WI, and DC.

NOTE.—If a hearing is deemed necessary, applicant requests it be held in Chicago, IL or Indianapolis, IN.

No. MC 107107 (Sub-No. 461F), filed February 23, 1978. Applicant: ALTERMAN TRANSPORT LINES, INC., 12805 Northwest 42nd Avenue, Opa Locka, FL 33054. Applicant's representative: Ford W. Sewell (same as above). Authority sought to operate as a *common carrier* by motor vehicle over irregular routes, transporting: *Bananas, and agricultural commodities* exempt from economic regulation under section 203(b)(6) of the Act, when transported in mixed loads with bananas, from Charleston, SC to points in CT, GA, IL, IN, IA, KS, KY, MA, MI, MN, MO, NE, NJ, NY, OH, PA, RI, SD, TN, WV, and WI.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held either at Miami, FL or Washington, D.C.

No. MC 107544 (Sub-No. 146F), filed February 21, 1978. Applicant: LEMMON TRANSPORT CO., INC., P.O. Box 580, Marion, VA 24354. Applicant's representative: Harry C. Ames, Jr., 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nitrogen textroxide*, in bulk in tank vehicles, from Vicksburg, MS to Bogalusa, LA. Applicant holds contract carrier authority under MC 113959 and other subs, therefore dual operations may be involved.

NOTE.—If a hearing is necessary, applicant requests that it be held at Washington, DC.

No. MC 107839 (Sub-No. 176F), filed February 27, 1978. Applicant: DENVER-ALBUQUERQUE MOTOR TRANSPORT, INC., 2121 East 67th Avenue, P.O. Box 16106, Denver, CO 80216. Applicant's representative: Edward T. Lyons, Jr., 1600 Lincoln Center Building, 1660 Lincoln Street, Denver, CO 80264. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from points in FL, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Tampa, FL.

No. MC 108341 (Sub-No. 84F), filed February 6, 1978. Applicant: MOSS TRUCKING CO., INC., 3027 North Tryon Street, P.O. Box 8409, Charlotte, NC 28208. Applicant's representative: Jack F. Counts, P.O. Box 8409, Charlotte, NC 28208. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings, building panels, building parts, and materials, accessories, and supplies* used in the installation, erection and construction of buildings, building panels, and building parts, (except commodities in bulk), from the facilities of Butler Manufacturing Co., at or near Annville, Lebanon County, PA to points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, LA, MI, MN, MS, MO, MT, NE, NV, NM, ND, OK, OR, SC, SD, TX, UT, WA, WI, and WY.

NOTE.—Hearing Site: Washington, DC. Common control may be involved.

No. MC 109124 (Sub-No. 41F), filed February 27, 1978. Applicant: SENTLE TRUCKING CORP., P.O. Box 7850, Toledo, OH 43619. Applicant's representative: James M. Burtch, 100 East Broad Street, Columbus, OH 43215. Authority sought as a *common carrier*, over irregular routes, transporting: *Lime*, (except in bulk) from the facilities of The United States Gypsum Co. located at or near Genoa, OH, to points in NJ, PA, MD, DE, WV, WI, MO, KY and the Upper Peninsula of MI. (Hearing site: Columbus, OH.)

No. MC 109397 (Sub-No. 398F), filed February 23, 1978. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Applicant's representative: A. N. Jacobs (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building panels, and related equipment, materials and supplies* moving in connection therewith, from Salt Lake County, UT and Dallas, TX, to points in the United States (except AK and HI).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests that it be held at either Dallas, TX or Salt Lake City, UT.

No. MC 109584 (Sub-No. 174F), filed February 6, 1978. Applicant: ARIZONA-PACIFIC TANK LINES, 3980 Quebec Street, P.O. Box 7240, Denver, CO 80207. Applicant's representative: Rick Barker (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cottonseed oil*, in bulk, in tank vehicles, from Casa Grande, AZ to Houston, TX.

NOTE.—Common control may be involved. (Hearing: Phoenix, AZ.)

No. MC 109689 (Sub-No. 331F), filed February 21, 1978. Applicant: W. S. HATCH CO., 643 South 800 West, Woods Cross, UT 84087. Applicant's representative: Mark K. Boyle, 345 South State Street, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cupric chloride*, from Chandler, Phoenix and Tempe, AZ to Santa Fe Springs, CA.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at Salt Lake City, UT.

No. MC 110525 (Sub-No. 1228F), filed February 24, 1978. Applicant: CHEMICAL LEAMAN TANK LINES,

INC., 520 East Lancaster Avenue, Downingtown, PA 19335. Applicant's representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicles, over irregular routes, transporting: *Corn products and blends thereof, fish oil and vegetable oil*, in bulk, in tank vehicles, from the facilities of Archer Daniels Midland Co., Bayway, NJ, to points in NY, PA, and VA. Restricted to shipments having a prior movement by rail from the facilities of Archer Daniels Midland Co. and destined to the named destination points.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at New York, NY.

Docket No. MC 110686 (Sub-No. 54F), filed February 23, 1978. Applicant: McCORMICK DRAY LINE, INC., Route 220, Avis, PA 17721. Applicant's representative: David A. Sutherlund, 1150 Connecticut Avenue NW., Suite 400, Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Valves, hydrants, pipe fittings, connectors and hangers, indicator posts, and castings*, from Elmira, NY, to points in VA, and (2) *parts, materials and supplies* used in the manufacture of the commodities listed in (1) above from points in VA to Elmira, NY.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at Washington, DC.

No. MC 111729 (Sub-No. 733F), filed February 21, 1978. Applicant: PUROLATOR COURIER CORP., 333 New Hyde Park Road, New Hyde Park, NY 11040. Applicant's representative: Elizabeth L. Henoch (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: 1. *Business, papers, records, and audit and accounting media of all kinds*, and 2. *Office supplies*, between Houston, TX on the one hand and, on the other, Brandon, Brookhaven, Columbia, Crystal Springs, Forest, Hazlehurst, Jackson, Laurel, Lumberton, Marks, McComb, Newton, Oxford, Petal, Philadelphia, Ruleville and Sardis, MS.

NOTE.—Applicant holds motor contract carrier authority in MC 112750, and Sub Numbers thereunder, and therefore dual operations may be involved. Common control may be involved. If a hearing is deemed necessary, applicant requests that it be held at Washington, DC.

No. MC 112304 (Sub-No. 136F), filed February 22, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., a corporation, 1601 Blue Rock Street, Cincinnati, OH 45223. Applicant's representative: John D. Herbert (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Water heaters, boilers, glass-lined tanks, and garbage disposals*, from the plantsite and shipping facilities of A. O. Smith Corp., at or near Kankakee, IL, to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, WV, and DC.

NOTE.—If a hearing is deemed necessary applicant requests it be held at Chicago, IL, or Washington, DC.

No. MC 113267 (Sub-No. 359F), filed February 21, 1978. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 3215 Tulane Rd. P.O. Box 30130 AMF, Memphis, TN 38130. Applicant's representative: Lawrence A. Fischer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Merchandise dealt in by wholesale, retail, chain grocery, and food business houses* (except in bulk, in tank vehicles) in mechanically refrigerated equipment, from the facilities of Kraft, Inc. at Atlanta, Decatur and Tucker, GA to points in the States of AL, LA, and MS.

NOTE.—If a hearing is deemed necessary applicant requests that it be held at either Atlanta, GA or Nashville, TN.

No. MC 113406 (Sub-No. 6F), filed February 24, 1978. Applicant: DOT LINES, INC., 1000 Findlay Road, Lima, OH 45802. Applicant's representative: Paul F. Beery, 275 East State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning, scouring, and washing compounds; and equipment, materials and supplies* used in the manufacture of cleaning, scouring and washing compounds (except commodities in bulk) between Bath Township, Allen County, OH on the one hand, and, on the other, points in IN, and the lower peninsula of MI.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Columbus, OH.

No. MC 113528 (Sub-No. 36F), filed February 23, 1978. Applicant: MERCURY FREIGHT LINES, INC., Post Office Box 1247, Mobile, AL 36601. Applicant's representative: Joy Stephenson, Post Office Box 1247, Mobile, AL 36601. Authority sought to operate as a *common carrier*, by motor vehicle, over *irregular routes*, transporting: (1) *Plastic pipe, pipe fittings, couplings, valves, accessories, and materials* used in the installation thereof, from Geneva County, AL, to points in GA, LA, MS, TN, and TX; (2) *Materials, equipment and supplies* used in the manufacture and distribution of commodities named in (1) above from points in GA, LA, MS, TN, and TX, to Geneva County, AL.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held in Atlanta, GA, or Birmingham, AL.

No. MC 113678 (Sub-No. 722F), filed February 23, 1978. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Applicant's representative: Roger M. Shaner (same as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Candy, confectionery*, and *confectionery products*, from Salt Lake City, UT, to points in the United States (except AK, HI, and UT), and (2) *Materials, equipment and supplies* used or useful in the manufacture, sale, or distribution of candy, confectionery, and confectionery products, from points in the United States (except AK, HI, and UT), to Salt Lake City, UT. The above authority is restricted against the transportation of commodities in bulk in tank vehicles, and is restricted to a transportation service to be performed in vehicles equipped with mechanical refrigeration. (Hearing site: Salt Lake City, UT or Denver, CO.)

No. MC 113843 (Sub-No. 249F), filed February 21, 1978. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer Street, Boston, MS 02210. Applicant's representative: Lawrence T. Sheils, 316 Summer Street, Boston MS 02210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts and articles distributed by meat packinghouses* (except hides and commodities in bulk), as defined in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, from the facilities utilized by Briggs and Co., a subsidiary of Wilson Foods Corp., at Landover, MD, to points in CT, MA, and RI. Restricted to the transportation of traffic originating at the above named origins and destined to the named destinations.

NOTE.—Common control may be involved. If a hearing is deemed necessary the applicant requests it be held in Dallas, TX or Kansas City, MO.

No. MC 113855 (Sub-No. 413F), filed March 23, 1978. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE., Rochester, MN 55901. Applicant's representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, in interstate or foreign commerce, transporting: (1) *Agricultural machinery, implements, equipment* and *parts* and *accessories*, from Kaukauna, WI, to points in the Unted States (except AK and HI); (2) *materials, equipment* and *supplies* used in the manufacture of the com-

modities described in (1) above from points in the United States (except AK and HI), to Kaukauna, WI.

NOTE.—Common control may be involved. Hearing: Assigned for hearing on May 9, 1978 (1 day), at 9:30 a.m. local time at Chicago, IL. Hearing room will be by subsequent notice.

No. MC 114457 (Sub-No. 359F), filed February 23, 1978. Applicant: DART TRANSIT CO., a corporation, 2102 University Ave., St. Paul, MN 55114. Applicant's representative: James H. Wills, 2102 University Ave., St. Paul, MN. 55114. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Baled wood pulp* from points in MI and WI to Brainerd, MN and Cloquet, MN.

NOTE.—If hearing is deemed necessary, applicant requests that it be held at St. Paul, MN or Chicago, IL.

No. MC 115311 (Sub-No. 269F), filed February 27, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Applicant's representative: Paul M. Daniell, P.O. Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, particleboard, hardboard, moulding, plastic articles, and accessories* used in the installation thereof (except commodities in bulk), from the facilities of Weyerhaeuser Co. located in Chesapeake, VA, to MN, WI, MI, IA, IL, IN, OH, KS, MO, KY, WV, NC, SC, GA, AL, TN, MS, AR, OK, FL, TX, LA, and CO.

NOTE.—Hearing site: Norfolk, VA.

No. MC 115496 (Sub-No. 83F), filed February 23, 1978. Applicant: LUMBER TRANSPORT, INC., P.O. Box 111, Cochran, GA 31014. Applicant's representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. Authority to operate as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of: *Pipe, fittings, valves, hydrants and materials and supplies* used in the installation thereof, from the facilities of Clow Corp. at or near Buckhannon, WV, to points in the United States located in and east of ND, SD, NB, KS, OK, and TX.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Atlanta, GA.

No. MC 115826 (Sub-No. 293F), February 23, 1978. Applicant: W. J. DIGBY, INC., P.O. Box 5088 T.A., Denver, CO 80217. Applicant's representative: Howard Gore, P.O. Box 5088 T.A., Denver, CO 80217. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides, chromes,* and *tanning products* from points in TX, NM, OK, NE, ID, CO, KS, SD, MN, WI, ND, MO, IL, MI, OH, and IN to TX.

NOTE.—If a hearing is deemed necessary, applicant requests it be held in Lubbock or Houston, TX.

No. MC 115826 (Sub-No. 294F), February 23, 1978. Applicant: W. J. DIGBY, INC., P.O. Box 5088 Terminal Annex, Denver, CO 80217. Applicant's representative: Howard Gore, P.O. Box 5088 Terminal Annex, Denver, CO 80217. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Grocery items, canned goods,* and *articles* dealt in by wholesale grocery warehouses while moving in trailers equipped with mechanical refrigeration units; from points in CA to El Paso and Lubbock, TX; Phoenix, AZ; and Albuquerque, NM. Restricted to traffic consigned to Furr's, Inc. and destined to the described destination points.

NOTE.—If a hearing is deemed necessary, applicant requests it be held in Lubbock, TX.

No. MC 115841 (Sub-No. 609F), filed February 27, 1978. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., Suite 110, 9041 Executive Park Drive, Knoxville, TN 37919. Applicant's representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sugar* (except in bulk) from Baltimore, MD, Philadelphia, PA, and Pittman, NJ, to points in GA, NC, and SC.

NOTE.—Common control may be involved. If a hearing is deemed necessary applicant requests that it be held at New York, NY, or Washington, DC.

No. MC 116142 (Sub-No. 25F), filed February 21, 1978. Applicant: BEVERAGE TRANSPORTATION, INC. 625 Eberts Lane, Box M-25, York, PA 17405. Applicant's representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages* from the plantsite of Miller Brewing Co. at or near Eden, NC, to points in VA, WV, MD, DE, NJ, PA and DC. Restricted to traffic originating at and destined to the above origin and destinations.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Harrisburg, PA or Washington, DC.

No. MC 116915 (Sub-No. 45) (correction) filed November 25, 1977; published in the FEDERAL REGISTER issue of January 19, 1978 and republished this issue. Applicant: ECK MILLER TRANSPORTATION CORP., 1830 S. Plate Street, Kokomo, IN 46901. Applicant's representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, poles, piling, pallets, timbers, cross-ties,* and *particle board*, between points in AL, AR, GA, LA, MS, and TN. Restricted to service for the account of The McGinnis Lumber Co., Inc.

NOTE.—The purpose of this republication is to show correct territorial description. If a hearing is deemed necessary applicant requests it be held at Jackson, MS, Nashville, TN, or Louisville, KY.

No. MC 118831 (Sub-No. 157F), filed February 23, 1978. Applicant: CENTRAL TRANSPORT, INC., P.O. Box 7007, High Point, NC 27264. Applicant's representative: Earlie O. Jones, P.O. Box 7007, High Point, NC 27264. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sodium Bromide*, in bulk, in tank vehicles, from El Dorado, AR to the Du Pont Cape Fear Plant, located at or near Wilmington, NC.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Washington, DC or Wilmington, DE. Common control may be involved.

No. MC 118959 (Sub-No. 162F), filed February 24, 1978. Applicant: JERRY LIPPS, INC., 130 South Frederick Street, Cape Girardeau, MO 63701. Applicant's representative: Robert M. Pearce, P.O. Box 1899, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Neelys Landing, MO, and Cape Girardeau, MO. Restriction: Restricted to the transportation of traffic having a prior or subsequent movement by rail or water.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Cincinnati, OH or Louisville, KY.

No. MC 119493 (Sub-No. 185F), filed February 21, 1978. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Applicant's representative: Lawrence F. Kloeppel (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed and feed ingredients*, from points in Newton County, MO, to points in the United States, (except AK, HI, AR, LA, MS, IL, TN, KS, OK, NE, IA, and that part of KY on and west of Interstate Hwy 65).

NOTE.—Hearing site: Joplin or Springfield, MO.)

No. MC 120257 (Sub-No. 44 F), filed February 22, 1978. Applicant: K. L. BREEDEN & SONS, INC., 401 Alamo Street, Terrell, TX 75160. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe* and *fittings* and (2) *materials* used in the manufacture and installation of plastic pipe and fittings (except commodities in bulk and commodities which because of size or weight require the use of special equipment) (1) from the facilities of Samson Plastic Conduit and Pipe Corp., located in Geneva County, AL, to points in AR, LA, MS, OK, and TX; and (2) from the destination states named in (1) above to the facilities of Samson Plastic Conduit and Pipe Corp., located in Geneva County, AL.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Montgomery or Brimingham, AL.

No. MC 121060 (Sub-No. 54F), filed February 22, 1978. Applicant: ARROW TRUCK LINES, INC., P.O. Box 1416, Birmingham, AL 35201. Applicant's representative: William P. Jackson, Jr. 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Iron and steel articles, from the facilities of Republic Steel Corp. at or near Gadsden, AL, to points in TX, OK, AR, LA, MS, TN, GA, FL, NC, and SC.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Birmingham, AL.

No. MC 123407 (Sub-No. 442F), filed February 24, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. Applicant's representative: H. E. Miller, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron, steel, and nonferrous metal support systems for conduit and cable in buildings;* and (2) *materials and supplies used in the manufacture and distribution of the commodities named in (1) above* (except commodities in bulk); (1) from Troy, IL, to those points in that part of the United States in and east of MT, WY, CO, and NM; and (2) from the destination points named in (1) above to Troy, IL.

NOTE.—Common control may be involved. Hearing site requested: St. Louis, MO.

No. MC 123669 (Sub-No. 6F), filed February 23, 1978. Applicant: SILVER TRUCK, INC., P.O. Box 41, Austin, MN 55912. Applicant's representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. Authority sought to operate as a *contract carrier* over irregular routes, by motor vehicle, transporting: *Corrugated sheets, corrugated shipping containers* and *parts of corrugated shipping containers*, from Cloquet, MN, to points in ND, under a continuing contract, or contracts, with Weyerhaeuser Co.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Minneapolis, MN.

No. MC 123819 (Sub-No. 52F), filed February 22, 1978. Applicant: ACE FREIGHT LINE, INC, P.O. Box 16589, Memphis, TN 38116. Applicant's representative: Bill R. Davis, Suite 101—Emerson Center, 2814 New Spring Road, Altanta, GA 30339. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid feed and liquid feed ingredients*, in bulk, in tank vehicles, from Indianoplis, MS to points in MO.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Jackson, MS.

No. MC 123872 (Sub-No.79), filed January 24, 1978. Applicant: W & L MOTOR LINES, INC., P.O. Box 2607 Hickory, NC 28601. Applicant's representative: Allen E. Bowman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture* and *furniture parts*, from points in VA, to points in CO, IA, KS, MN, NE, ND, SD, and WI.

NOTE.—Hearing Site: Charlotte, NC.

No. MC 123872 (Sub-No. 83F), filed February 23, 1978. Applicant: W & L MOTOR LINES, INC., P.O. Box 2607, Hickory, NC 28601. Applicant's representative: Allen E. Bowman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), from Independence, MO, to points in GA, NC, SC, points in TN on and east of Interstate HWY 65 and VA, restricted to traffic originating at the named origin and destined to the named states. (Hearing site: Kansas City, MO, or KS.)

No. MC 124711 (Sub-No. 52F), filed February 27, 1978. Applicant: BECKER CORP., P.O. Box 1050, El Dorado, KS 67042. Applicant's representative: T. M. Brown, 223 Ciudad Building, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, from the facilities of Farmland Industries, Inc., at or near Hoag, NE, to points in IA, KS, and MO. (Hearing site: Kansas City, MO or Oklahoma City, OK.)

No. MC 124896 (Sub-No. 48F), filed February 27, 1978. Applicant: WILLIAMSON TRUCK LINES, INC., P.O. Box 3485, Wilson, NC 27893. Applicant's representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products in containers, oil and air filters, and vehicle body sealer and sound deadener compound*, from Congo and St. Mary's, WV, to points in AL, GA, NC, and SC.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Pittsburgh, PA or Atlanta, GA.

No. MC 124947 (Sub-No. 100F), filed February 27, 1978. Applicant: MACHINERY TRANSPORTS, INC., 1945 South Redwood Road, Salt Lake City, UT 84104. Applicant's representative: David J. Lister (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Conveyors and conveyor parts* (except in bulk), from the facilities of Central Manufacturing Co. at or near Graveland, IL, to points in CT, IN, MD, MI, MN, NJ, NY, OH, PA, TN, and VA.

NOTE.—Common control may be involved. (Hearing site: Chicago, IL.)

No. MC 126045 (Sub-No. 22F), filed February 24, 1978. Applicant: ALTER TRUCKING & TERMINAL CORP., P.O. Box 3122, Davenport, IA 52808. Applicant's representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, IA 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors* (except truck tractors), agricultural machinery and implements, grain bins, equipment designed for use in connection with the above referred to commodities, parts, attachments, and accessories for the above commodities, and *materials, equipment, and supplies*, used in the manufacture, sale, and distribution of the above named commodities, between the facilities of Long Manufacturing of North Carolina, Inc., at or near Davenport, IA, on the one hand, and, on the other, points in IL, IN, KS, KY, MI, MN, MO, NE, ND, OH, SD, and WI. Restricted to the transportation of traffic originating at and/or destined to the facilities of Long Manufacturing of North Carolina, Inc.

NOTE.—Hearing site: Chicago, IL, or Kansas City, MO. Applicant holds contract carrier authority in No. MC 133880 (Sub-No. 2), therefore dual operations may be involved.

No. MC 126118 (Sub-No. 67F), filed February 23, 1978. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, NE 68501. Applicant's representative: Duane W. Acklie, P.O. Box 81228, Lincoln, NE 68501. Authority

sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Nuts*, and (2) *agricultural commodities* exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act when transported in mixed loads with regulated commodities, from CA to points in CO, TX, and WA.

NOTE.—Applicant holds contract carrier authority in No. MC 128375 (Sub-No. 1), and subs thereunder, therefore dual operations may be involved. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Sacramento, CA or Lincoln, NE.

No. MC 126473 (Sub-No. 32F), filed February 24, 1978. Applicant: HAROLD DICKEY TRANSPORT, INC., Packwood, IA 52580. Applicant's representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, IA 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, articles distributed by meat packinghouses, and foodstuffs* (except hides and commodities in bulk), from the facilities of Rawhide Bavarian Meat, Inc., at or near Sigourney, IA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL, or Kansas City, MO.)

No. MC 127042 (Sub-No. 210F), filed February 27, 1978. Applicant: HAGEN, INC., P.O. Box 98, Leads Station, Sioux City IA 51108. Applicant's representative: Robert G. Tessar, P.O. Box 98, Leeds Station, Sioux City, IA 51108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Insulation and insulation materials;* (2) *fertilizer and fertilizer ingredients*, (except in bulk; (3) from Kenosha, WI to points in MN, ND, SD; and (4) from Kenosha and Union Grove, WI to points in IL, IN, IA, MN, MO, ND, and SD.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Milwaukee or Madison, WI.

No. MC 127303 (Sub-No. 33F), filed February 8, 1978. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 63126. Applicant's representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority is sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, closures, and fiberboard boxes*, from Streator, IL, to St. Louis, MO, and points in WI.

NOTE.—Applicant is currently handling the involved traffic on an interline basis. If a hearing is deemed necessary, applicant requests that it be held in Chicago, IL, or Washington, DC.

No. MC 127539 (Sub-No. 65F), filed February 21, 1978. Applicant: PARKER REFRIGERATED SERVICE, INC., 1108 54th Avenue East, Tacoma, WA 98424. Applicant's representative: Michael D. Duppenthaler, 515 Lyon Building, 607 Third Avenue, Seattle, WA 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in vehicles equipped with mechanical refrigeration, from the facilities of Leslie Foods, a division of Leslie Salt Co., located at or near Oakland, San Jose, and Sunnyvale, CA, to points in OR and WA. (Hearing site: Seattle, WA.)

No. MC 127539 (Sub-No. 66F), filed February 21, 1978. Applicant: PARKER REFRIGERATED SERVICE, INC., 1108 54th Avenue East, Tacoma, WA 98424. Applicant's representative: Michael D. Duppenthaler, 515 Lyon Building, 607 3rd Avenue, Seattle, WA 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Margarine, mayonnaise and peanut butter*, in vehicles equipped with mechanical refrigeration, from the plantsite of Shedds Food Products at or near Sunnyvale, CA, to points in OR and WA. (Hearing site: Seattle, WA.)

No. MC 127705 (Sub-No. 49F), filed February 22, 1978. Applicant: KREVDA BROS. EXPRESS, INC., P.O. Box 68, Gas City, IN 46933. Applicant's representative: Donald W. Smith, Suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes in the transportation of *glass containers* from Terre Haute, IN to points in KY, IL, MI, NY, OH, and PA.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Washington, DC.

No. MC 128117 (Sub-No. 31F), filed February 28, 1978. Applicant: NORTON-RAMSEY MOTOR LINES, INC., P.O. Box 896, Hickory, NC 28601. Applicant's attorney: Francis J. Ortman, 7101 Wisconsin Avenue, Suite 605, Washington, DC. 20014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cribs*, from the plantsites of Bassett Furniture of North Carolina, Inc., at or near Statesville and Hickory, NC, to the plantsites and warehouse facilities of Bassett Furniture Industries, Inc., in Henry County, VA.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at Washington, DC.

No. MC 128273 (Sub-No. 289F), filed February 22, 1978. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Applicant's representative: Elden Corban, P.O. Box 189, Fort Scott, KS 66701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes in the transportation of: *Paper, paper products, and plastic products*, from Kalamazoo, Parchment, and Portage, MI, to points in IL, IN, IA, MI, NE and OH, and points in that part of PA west of a line beginning at the PA-WV State line and extending along U.S. Hwy 119 to junction U.S. Hwy 219, then along U.S. Hwy 219 to the NY-PA State line, points in that part of WI on and east of U.S. Hwy 41, Minneapolis and ST. Paul, MN, and points in their commercial zone as defined by the Commission, Kansas City, MO, and Kansas City, KS, and points in their commercial zone as defined by the Commission, Louisville, KY, Austin, MN, St. Louis, MO, Buffalo, Syracuse, and Rochester, NY, and points in their commercial zones as defined by the Commission.

NOTE.—If a hearing is deemed necessary, aplicant requests it be held at Kalamazoo MI, or Washington, DC.

No. MC 128746 (Sub-No. 35F), filed February 28, 1978. Applicant: D'AGATA NATIONAL TRUCKING CO., 3240 South 61st Street, Philadelphia, PA 19153. Applicant's representative: Edward J. Kiley, 1730 M Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, in the transportation of *glass containers*, from the plantsite and storage facilities of Midland Glass, at or near Cliffwood, NJ to points in VA and NC within an area contained by the following boundaries: Person, Durham, Orange, Chatham, Randolph, Davidson, Davie, Yadkin and Surry Counties, NC and Carroll, Pulaski, Montgomery, Floyd, Patrick, Henry, Franklin, Bedford, Pittsylvania and Halifax Counties, VA.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at either Philadelphia, PA or Washington, DC.

No. MC 133591 (Sub-No. 38F), filed February 27, 1978. Applicant: WAYNE DANIEL TRUCK, INC., Post Office Box 303, Mount Vernon, MO 65712. Applicant's representative: Harry Ross, 58 South Main Street, Winchester, KY 40391. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cough drops, candy and confectionaries, including hollow molded chocolate and marshmallow figures and images*, from facilities of Ludens, Inc., at or near Reading, PA to points in MS, LA, TN, AR, OK, KS, MO, and points in IL which are on or south of Interstate Hwy 74.

NOTE.—Hearing site: Washington, DC. Applicant holds contract carrier authority in

No. MC 134494 (Sub-No. 1) and other subs thereunder, therefore dual operations may be involved.

No. MC 133689 (Sub-No. 171F), filed February 27, 1978. Applicant: OVERLAND EXPRESS, INC., 719 First Street SW., New Brighton, MN 55112. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs* (except commodities in bulk) moving in vehicles equipped with mechanical refrigeration from the plantsite and storage facilities of Terminal Ice and Storage located at or near Bettendorf, IA to points in AL, GA, SC, NC, TN, KY, VA, WV, MO, IL, IN, OH, MI, DE, MD, PA, NY, NJ, CT, MA, NH, VT, ME, RI and DC; (2) *foodstuffs and materials, equipment, and supplies* (except commodities in bulk) used or useful in the processing of foodstuffs from points in AL, GA, SC, NC, TN, KY, VA, WV, MO, IL, IN, OH, MI, DE, MD, PA, NY, NJ, CT, MA, NH, VT, ME, RI and DC, to the facilities of Terminal Ice and Storage Co. located at or near Bettendorf, IA. Restriction: Restricted in part (1) to traffic originating at the named origin and destined to the indicated destinations. Restricted in part (2) to traffic originating at the named origins and destined to the indicated destinations.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at St. Paul, MN.

No. MC 134405 (Sub-No. 44F), filed February 23, 1978. Applicant: BACON TRANSPORT CO., P.O. Box 1134, Ardmore, OK 73401. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Building, 3535 Northwest 58th Street, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crude tall oil*, from Valliant, OK to De Ridder, LA. (Hearing site: Oklahoma City, OK.)

No. MC 134477 (Sub-No. 220F), filed February 27, 1978. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, air cleaner filters* (except commodities in bulk) from Madisonville, KY; West Groton, MA; Rochester, MI; and Watertown, and Greenwich, NY; to the facilities of Donaldson Co., Inc. at or near Dixon, IL; Cresco, IA; Minneapolis, MN; and Kirksville, MO.

NOTE.—Hearing site Minneapolis, MN.

No. MC 134755 (Sub-No. 132F), filed February 23, 1978. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Applicant's representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs* (except in bulk), (2) *pet foods* (except in bulk), (3) *pet supplies and materials* (except in bulk), (4) *cleaning compounds* (except in bulk), and (5) *commodities* the transportation of which are exempt from economic regulations under section 203(b)(6) of the Interstate Commerce Act when transported in same vehicle and at the same time with any of the commodities in (1), (2), (3), and (4), from Springfield and Carthage, MO, to points in NM, TX, LA, and MS.

NOTE.—Applicant holds motor contract carrier authority in MC 138398 and sub numbers thereunder, therefore, dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, applicant requests it be held at either Kansas City, MO, or St. Louis, MO.

No. MC 135797 (Sub-No. 93) (correction and amendment), filed December 27, 1977, published in the FR issue of February 16, 1978 as No. MC 13597 (Sub-No. 93), and republished as corrected this issue. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 200, Lowell, AR 72745. Applicant's representative: Paul A. Maestri (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Canned goods and pimientos in glass containers*, from the facilities of Forrest Park Canning Co., Inc., at Johnson and Springdale, AR, to points in the United States including AK, excluding HI; restricted to the transportation of traffic originating at the above named facilities; (2) *Canned goods and canned juices*, from Haskell, OK, to points in the United States including AK, excluding HI; and (3) *Canned goods and pimientos in glass containers, and machinery, materials, and supplies* as are used in the manufacture or distribution of the commodities named in (1) and (2) above, from points in the United States including AK, excluding HI, to Johnson and Springdale, AR, and Haskell, OK.

NOTE.—The purpose of this correction is to indicate the correct docket number as No. MC 135797 (Sub-No. 93); the purpose of the amendment is to broaden the commodity description in (3) above. Common control may be involved. (Hearing site: Fayetteville, AR, or Tulsa, OK.)

No. MC 138134 (Sub-No. 9F), filed February 24, 1978. Applicant: DONALD HOLLAND TRUCKING, INC., 1300 Main Street, Keokuk, IA 52632. Applicant's representative: Kenneth F. Dudley, P.O. Box 279, 611 Church Street, Ottumwa, IA 52501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Calcium carbide, in containers*, from Keokuk, IA to points in AL, AR, FL, GA, KY, LA, MS, NM, OK, TN, and TX for the account of Midwest Carbide Corp.

NOTE.—Hearing site: Chicago, IL or Kansas City, MO.

No. MC 138741 (Sub-No. 45F), filed February 24, 1978. Applicant: AMERICAN CENTRAL TRANSPORT, INC., 2005 North Broadway, Joliet, IL 60435. Applicant's representative: Tom B. Kretsinger, 910 Brookfield Building, 101 West Eleventh Street, Kansas City, MO 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cast iron pipe, fittings, valves and hydrants, and materials*, used in the installation thereof (except oil field commodities as defined in Mercer extension oil field commodities 74 MCC 459) from the facilities of the Clow Corp., at Coshocton, OH, to points in AR, IA, KS, KY, those points in the Lower Peninsula of MI, and points in MN, MO, NE, OK, TN, and WI; and (2) *refused, rejected or returned shipments* from the destination points in (1) above, to Coshocton, OH, restricted against the transportation of commodities in bulk.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, IL.

No. MC 138902 (Sub-No. 7F), filed February 24, 1978. Applicant: ERB TRANSPORTATION CO., INC., P.O. Box 45, Crozet, VA 22932. Applicant's representative: Harry C. Ames, Jr., Suite 805, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, between Crozet, VA, on the one hand, and, on the other, points in the States of ME, NH, VT, MA, RI, and CT.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Washington, DC.

No. MC 139206 (Sub-No. 9F), filed February 21, 1978. Applicant: F.M.S. TRANSPORTATION, INC., Box 1597, 2564 Harley Drive, Maryland Heights, MO 63043. Applicant's representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought by applicant to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Castings, patterns, and molds and parts and accessories therefor;* and (2) *materials, equipment and supplies* used in the manufacture, processing, sale, molding, assembly, transportation, repair, and distribution of the commodities in (1) above (except commodities in bulk), between Elyria, OH, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to transporta-

tion of traffic moving under a continuing contract, or contracts, with Chromalloy American Corp.

NOTE.—(1) Applicant states that it is a commonly-controlled contract carrier for Chromalloy American Corp. and the purpose of this application is to allow shipper to substitute applicant's contract carrier operations for the shipper's private carriage. Applicant states it already holds authority to transport traffic between thirteen (13) other locations of shipper, on the one hand, and, on the other, points in the United States (except AK and HI). (2) Applicant further states that common control and dual operations may be involved. If a hearing is deemed necessary, it is requested in St. Louis, MO.

No. MC 139206 (Sub-No. 11F), filed February 21, 1978. Applicant: F.M.S. TRANSPORTATION, INC., Box 1597, 2564 Harley Drive, Maryland Heights, MO 63043. Applicant's representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought by applicant to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass, glass products, glass articles, mirrors, and mirrored products*, and (2) *materials, equipment and supplies* used in the manufacture, production, assembly, coating, cutting, packing, transportation, finishing, sale and distribution of the commodities named in (1) above (except commodities in bulk), between Houston, TX, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic moving under a continuing contract, or contracts, with Chromalloy American Corp.

NOTE.—(1) Applicant states that it is a commonly controlled contract carrier for Chromalloy American Corp. and the purpose of this application is to allow the shipper to substitute the contract carrier services of applicant for its private carriage. Applicant further states that it already holds authority to provide similar service for this shipper between thirteen (13) other points, on the one hand, and, on the other, points in the United States (except AK and HI). (2) Applicant states that dual operations and common control may be involved. If a hearing is deemed necessary it is requested in St. Louis, MO.

No. MC 139254 (Sub-No. 14F), filed February 22, 1978. Applicant: BROOKS TRANSPORTATION, INC., 30650 Carter Road, Solon, OH 44139. Applicant's representative: John P. McMahon, 100 East Broad Street Columbus, OH 43215. Applicant proposes to operate in interstate or foreign commerce, as a *contract carrier* by motor vehicle, over irregular routes, transporting: *Commodities* manufactured, distributed or sold by manufacturers of rubber or plastic materials and products (except commodities in bulk), from the plantsites and storage facilities of The B. F. Goodrich Co., Chemical Division, at or near Henry, IL; Louisville, KY; Pedricktown, NJ, and Akron and Avon Lake, OH, to points in the United States in and east of MN, IO, MO, AR and LA, limited to a transportation service to be performed under a continuing contract or contracts, with The B. F. Goodrich Co., Chemical Division.

NOTE.—Applicant holds common carrier authority in No. MC 142559 and subs thereunder, therefore dual operatings may be involved. Common control may also be involved. If a hearing is deemed necessary, applicant requests it be held at Columbus, OH.

No. MC 139487 (Sub-No. 4) (correction), filed January 26, 1978, published in the FEDERAL REGISTER issue of March 9, 1978 as No. MC 13947 (Sub-No. 4), and republished this issue. Applicant: COBO, INC., 15000 FM Road 1825, Round Rock, TX 78664. Applicant's representative: W. S. Levens (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, between Laredo, Brownsville, Corpus Christi, Port Lavaca, Freeport, San Antonio, Austin, El Paso, Hays County and Comal County, TX to points in TX, restricted to traffic having a prior movement outside of TX in interstate or foreign commerce.

NOTE.—The purpose of this republication is to show correct docket No. that was incorrectly published in the FEDERAL REGISTER. Common control may be involved. (Hearing site: Austin or San Antonio, TX.)

No. MC 140484 (Sub-No. 29F), filed February 28, 1978. Applicant: LESTER COGGINS TRUCKING, INC., 2671 East Edison Avenue, P.O. Box 69, Fort Myers, FL 33902. Applicant's representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric motors, electric gear motors, power transmission equipment, and machinery and controllers or controller parts and parts and accessories therefor, elevator and elevator parts and accessories, escalator and escalator parts and accessories, weighing machinery and parts and accessories and tele-communication equipment and parts and accessories*, between Cleveland, OH; Mishawaka, IN; Rogersville, TN; and Lexington, KY. (Hearing site: Lexington, KY.)

No. MC 140612 (Sub-No. 45F), filed February 27, 1978. Applicant: ROBERT F. KAZIMOUR, P.O. Box 2207, Cedar Rapids, IA 52406. Applicant's representative: J. L. Kazimour, P.O. Box 2207, Cedar Rapids, IA 52406. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles and accessories and materials and supplies* used in the manufacture and distribution of plastic articles, between the manufacturing facilities of Centro, Inc. located at or near Oxford, IA on the one hand and, on the other, points in KS, MO, IL, MI, OH, IN, KY, AR, TX, WI, MN, TN, and IA.

NOTE.—Applicant holds contract carrier authority in No. MC 138003 and Subs thereunder, therefore dual operations may be involved.

No. MC 140717 (Sub-No. 7F), filed February 21, 1978. Applicant: JULIAN MARTIN, INC., 1490 South 14th Street, Batesville, AR 72501. Applicant's representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. Authority is sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and articles* distributed by meat packinghouses as described in sections A and C of appendix I to the report in *descriptions in motor carrier certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk), from the plantsites and facilities of Swift & Co., located at or near Des Moines, IA to points in AR, LA, and MS, under a continuing contract with Swift Fresh Meats Co., a division of Swift & Co.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held in Washington, DC or Chicago, IL. Applicant holds common carrier authority in MC 124141; therefore, dual operations may be involved.

No. MC 140829 (Sub-No. 78F), filed February 21, 1978. Applicant: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Hwy 20, Sioux City, IA 51102. Applicant's representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wire and cable*, from Linden and Hillside, NJ to points in AZ, CA, CO, IA, MN, TX, UT and WI, restricted to traffic originating at the named origins and destined to points in the named destination States.

NOTE.—Applicant holds contract carrier authority in MC 136408 and Subs thereunder; therefore dual operations may be involved. (Hearing site: Washington, DC.)

No. MC 140829 (Sub-No. 81F), filed February 27, 1978. Applicant: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Hwy 20, Sioux City, IA 51102. Applicant's representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs and equipment, materials and supplies* utilized by the manufacturers of foodstuffs from Lowell, MA to points in IL and MI, restricted to the transporta-

tion of traffic originating at the named origin and destined to points in the above named destination States.

NOTE.—Applicant holds contract carrier authority in MC 136408 (Sub-No. 7) and other Subs thereunder; therefore dual operations may be involved. (Hearing site: Washington, DC.)

No. MC 140849 (Sub-No. 15) (correction), filed December 12, 1978. Published in the FEDERAL REGISTER issue of February 9, 1978 as MC 126243 (Sub-No. 24) and republished this issue. Applicant: ROBERTS TRUCKING CO., INC., P.O. Drawer G, Poteau, OK 74953. Applicant's representative: Prentiss Shelley, (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Expanded plastic articles* (except commodities in bulk, in tank vehicles), from Oklahoma City, OK, to points in AL, GA, FL, MS, LA, KY, TN, NC, SC, and VA, under a continuing contract or contracts with Alprod Corp., of Oklahoma City, OK.

NOTE.—The purpose of this republication is to show applicant's correct contract carrier docket number which was incorrectly published in the FEDERAL REGISTER under applicant's common carrier number. Applicant holds motor common carrier authority in No. MC 126243 and Subs thereunder, therefore dual operations may be involved. (Hearing site: Oklahoma City, OK or Washington, DC.)

No. MC 141751 (Sub-No. 1F), filed February 21, 1978. Applicant: M.P.C. TRUCKING, INC., Cold Stream Road, Kimberton, PA 19442. Applicant's representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *roofing and coating materials*, and *paints* and *materials, supplies* and *equipment* used in the manufacture or distribution of roofing and coating materials and paint, between Rock Hill, SC on the one hand and, on the other, points in TX, LA, MS, AR and OK. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract or contracts with Monsey Products Co., Inc.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held either at Washington, DC or Philadelphia, PA.

No. MC 141804 (Sub-No. 101F), filed February 23, 1978. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 422, Goodlettsville, TN 37072. Applicant's representative: Frederick J. Coffman, P.O. Box 422, Goodlettsville, TN 37072. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper labels* (plain or printed), (2) *gummed paper*, (3) *corrugated boxes*, and (4) *materials, parts and supplies* used in the manufacture of the commodities described in (1), (2), and (3), from points in CT, DL, FL, GA, IL, IN, IA, KS, LA, MD, MA, MI, MN,. MO, NJ, NY, NC, OH, PA, and WI to Azusa and Monrovia, CA, restricted to traffic destined to the facilities of Avery Label.

NOTE.—Hearing Site: Los Angeles, CA or Nashville, TN.

Docket MC 142059 (Sub-No. 18F), filed February 24, 1978. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Road, Joliet, IL 60436. Applicant's representative: Jack Riley, 1830 Mound Road, Joliet, IL 60436. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides, skins, and pelts, and pieces* therefrom, (except commodities in bulk), from the hide plant of Iowa Beef Processors, Inc., at or near Dakota City, NE, to points in the States of AL, AR, CA, DE, GA, IL, IN, KY, MD, MA, MI, MO, NJ, NY, OH, PA, TN, VA, WV, WI, and the ports of entry on the International Boundary Line between the United States and Canada located in MI and NY. Restriction: Restriction to the transportation of traffic originating at the named origin and destined to the indicated destination, except on export traffic.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held in Sioux City, IA or Omaha, NE.

No. MC 142672 (Sub-No. 12F), filed February 21, 1978. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., Post Office Drawer F, Mulberry, AR 72947. Applicant's representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Yarn wool and synthetic fiber yarn*, and (2) *textile machinery, parts and supplies used in the manufacture of the commodities named in (1) above*, from Beulaville, Warsaw, Washington, and Whiteville, NC, to Long Beach, CA.

NOTE.—If a hearing is deemed necessary, the applicant requests that same be held at Raleigh, NC or Tulsa, OK. Applicant holds contract carrier authority in No. MC 142065 (Sub-No. 1) and others, therefore dual operations may be involved.

No. MC 142827 (Sub-No. 4F), filed February 27, 1978. Applicant: DE MARLIE TRUCKING, INC., Box 338, Reynolds, IL 61279. Applicant's representative: Robert H. Levy, 29 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* (except hides and commodities in bulk), as defined in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 706, from the facilities of Illini Beef Packers, Inc., at Joslin, IL, to points in IN, MI, OH, LA, AR, MO, IA, MN, WI, MS, AL, GA, FL, NC, SC, VA, KY, and TN.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, IL.

No. MC 142883 (Sub-No. 1F), filed February 23, 1978. Applicant: HARVEY H. MILLER, d./b./a. CAROLINA EXPRESS CO., 304 South Mint Street, Charlotte, NC 28202. Applicant's representative: Melvin L. Watt, 951 South Independence Boulevard, Charlotte, NC 28202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *general commodities*, (except classes A & B explosives) on piggy back shipments having a prior or subsequent movement by rail: (a) Between Charlotte, NC, on the one hand, and on the other, Rock Hill, Grace, Fort Lawn, Lancaster, Kershaw, Fort Mill, Mullins, Chester, Greenville, Winona, and Columbia, SC. (b) Between Charlotte, NC, on the one hand, and on the other, Laurel Hill, Monroe, Richfield, Albemarle, Welcome, Wagram, and Tarboro, NC.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Charlotte, NC.

No. MC 143047 (Sub-No. 4F), filed February 21, 1978. Applicant: C. W. MITCHELL, INC., d./b./a. MITCHELL TRANSPORT, 4401 North Westshore Boulevard, Tampa, FL 33684. Applicant's representative: Rudy Yessin, 314 Wilkinson Street, Frankfort, KY 40601. Authority sought to operate as a *contract carrier* by motor vehicle, over irregular routes, transporting: *Meats and meat products, packaged*, from points in IL, KY, IA, MO, NE, and TX, to points in MI, GA, TN, and AL, under a continuing contract with Peninsular Meat Co, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it to be held at Tampa, FL. Applicant holds common carrier authority in No. MC 140852, therefore dual operations may be involved.

No. MC 143161 (Sub-No. 4) (correction), filed January 27, 1978, published in the FEDERAL REGISTER issue of March 9, 1978 and republished as corrected this issue. Applicant: BEVERAGE TRANSPORT, INC., Box 13515, 1210 Bluff Rd., Columbia, SC 29201. Applicant's representative: Harry S. Dent, P.O. Drawer 528, Columbia, SC 29202. Authority sought to operate as a *contract carrier*, by motor carrier, over irregular routes, transporting: *Plastic bottles, plastic bottle preforms, and materials, supplies and equipment* used in the manufacture and market-

ing of plastic bottles and plastic bottle preforms, between Cheraw, SC, on the one hand, and, on the other, points in FL, GA, AL, MS, LA, TX, TN, NC, VA, WV, KY, IL, IN, OH, MD, DE, PA, NY, NJ, MI, WI, CT, RI, MA, VT, ME, and DC, under a continuing contract or contracts with Carolina Packaging, Inc. of Cheraw, SC.

NOTE.—The purpose of this correction is to show actual authority sought. If a hearing is deemed necessary, applicant requests it be held at Columbia, SC, Atlanta, GA or Washington, DC.

No. MC 143264 (Sub-No. 4F), filed February 22, 1978. Applicant: DAIRY LEASING SERVICE, INC., 803 Herring Avenue, Wilson, NC 27893. Applicant's representative: Thomas N. Willess, 1000 Sixteenth St., NW., Washington, DC 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes transporting: (1) *Dairy products* (except in bulk), (A) from Charlotte, Wilson, and Winston-Salem, NC, to FL, GA, LA, MD, PA, SC, TN, and VA, (B) from Chambersburg, PA, to FL, GA, MD, NC, SC, and VA, (C) from Atlanta, GA, to FL, MD, NC, PA, SC, and VA, (D) from South Edmeston and Walton, NY, to FL, GA, NC, and VA; (2) *citrus juice and concentrates* (except in bulk), from Bradenton, Dade City, Dunedin, Lakeland, Ocala, and Plymouth, FL, to GA, MD, NY, NC, PA, SC, VA, and WV; and (3) *foodstuffs* (except in bulk), from Allentown, PA, to GA, MD, NC, SC, and VA; the above authority is performed under a continuing contract or contracts, with Kraft, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Raleigh, NC, or Washington, DC.

No. MC 143267 (Sub-No. 11F), filed February 22, 1978. Applicant: CARLTON ENTERPRISES, INC., 4588 State Route 82, Mantua, OH 44255. Applicant's representative: Peter A. Greene, 900 17th Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flour* from the facilities of The Williams Bros. Co. at Kent, OH to points in IN, NJ, NY, PA, VA, and WV.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Cleveland, OH or Washington, DC.

No. MC 143503 (Sub-No. 10F), filed February 23, 1978. Applicant: MERCHANTS HOME DELIVERY SERVICE, INC., P.O. Box 5067, Oxnard, CA 93031. Applicant's representative: T. M. Brown, 223 Ciudad Building, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, new furnishings*, and *accessories*, between the facilities of Rhodes Furniture, Inc., at or near Jacksonville, FL, on the one hand, and, on the other, points in Camden, Glynn, McIntosh, Charlton, Ware, Echols, Clinch, Lawndes, Lanier, Brantley, Pierce, Wayne, Long, Brooks, Cook, Berrien, and Atkinson Counties, GA.

NOTE.—Applicant holds contract carrier authority in MC 136211, Sub 1, and other subs thereunder, therefore dual operations may be involved.

NOTE.—If a hearing is deemed necessary the applicant requests it be held at Jacksonville, FL or Oklahoma City, OK.

No. MC 143616 (Sub-No. 6F), filed February 24, 1978. Applicant: M & S TRANSPORT LINES, INC., P.O. Box 417, Sultana, CA 93666. Applicant's representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paints, lacquer, lubricating oil, bronzing liquids, and compounds* (except commodities in bulk), from Norristown, PA, to points in TX and CA, under a continuing contract or contracts with Borden Chemical Division, of Borden, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Columbus, OH or Washington, DC.

No. MC 143917 (Sub-No. 1F), filed February 21, 1978. Applicant: SAM YOUNG, INC., R. R. 1, Box 76, Wolcott, IN 47995. Applicant's representative: Donald W. Smith, Suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Printed matter* from the plantsite and warehouse facilities of Album Graphics, Inc. at or near Melrose Park, IL, to points in MD, CA, and IN. Restriction: Restricted to service to be performed under a continuing contract or contracts with Album Graphics, Inc.

NOTE.—Hearing site: Chicago, IL.

No. MC 143939 (Sub-No. 2F), filed February 27, 1978. Applicant: GERALD N. EVENSON, INC., P.O. Drawer I, Pelican Rapids, MN 56572. Applicant's representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bagged insulation* from Barrett and Vergas, MN, to points in CO, IL, IA, KS, MI, MO, MT, NE, ND, SD, WI, and WY; and (2) *scrap paper, waste products for recycling* and other materials and supplies used in the manufacture and distribution of bagged insulation (except commodities in bulk, in tank vehicles) from points in the United States to Barrett and Vergas, MN.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Minneapolis or St. Paul, MN.

No. MC 143988 (Sub-No. 3F), filed February 23, 1978. Applicant: JAMES W. TATE, d.b.a. JAMAR TRUCKING, 5377 Fleetway Avenue, Memphis, TN 38118. Applicant's representative: Thomas A. Stroud, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Applicant seeks authority to operate as a *common carrier*, by motor vehicle, in interstate and foreign commerce, over irregular routes, transporting: *Frozen pastries* and *materials, supplies* and *equipment* used in the manufacture of frozen pastries, in mechanically refrigerated vans, between the plantsite and facilities of Ole South Foods, Inc. at or near Little Rock and Springdale, AR, on the one hand, and, on the other, points in AZ, CA, NM, IL, MI, MO, OK, TX, KS, MS, GA, AL, FL, SC, NC, VA, WV, KY, TN, IN, OH, PA, MD, LA, and OR.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Little Rock, AR or Memphis, TN.

No. MC 144167 (Sub-No. 2F), filed February 21, 1978. Applicant: K/T RAILROAD EQUIPMENT CO., INC., 29 Pleasant Valley Road, Whippany, NJ 07981. Applicant's representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Contaminated chemicals*, in sealed drums, (1) From points in NJ and NY to land fill sites in IL, OH, PA, MD, and MA; (2) Between points in NJ and NY on the one hand, and, on the other Connecticut and (3) From points in CT to land fill sites in Massachusetts, under continuing contract or contracts with Advanced Environmental Technology Corp.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at New York City, NY.

No. MC 144184 (Sub-No. 1F), filed February 21, 1978. Applicant: R. T. PUGH MOTOR TRANSPORTATION, INC., 233 Whiley Avenue, Lancaster, OH 43130. Applicant's representative: James Duvall, Post Office Box 97, 220 West Bridge Street, Dublin, OH 43017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Limestone and limestone products*, in bulk, from Aurora, IN, to Lancaster, OH.

NOTE.—Hearing site: Columbus, OH.

No. MC 144335F, filed February 21, 1978. Applicant: DONALD H. BAUGHMAN, INC., 986 Oliver Street, North Tonawanda, NY 14120. Applicant's representative: William J. Hirsch, 43 Court Street, Suite 1125, Buffalo, NY 14202. Authority sought to operate as a *common carrier*, over irregular routes, transporting: *Anhy-*

drous aluminum chloride, from the plantsite of Ascension Chemical Corp., of TX, at or near Huntsville, TX, to all points in the United States (except Alaska and Hawaii) and returned shipments in return.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Buffalo, NY.

No. MC 144363F, filed February 23, 1978. Applicant: HIRSCHBACH MOTOR LINES, INC., 5000 South Lewis Boulevard, P.O. Box 417, Sioux City, IA 51102. Applicant's representative: George L. Hirschbach, P.O. Box 417, Sioux City, IA 51102. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Such merchandise as is dealt in or used by retail stores* (except foodstuffs and commodities in bulk), from points in AL, KY, MS, NC, and TN and Miami, FL, Columbus, GA, and Columbia, SC to Des Moines, IA; (2) *Such merchandise as is dealt in or used by retail stores* (except foodstuffs and commodities in bulk), between the facilities of Ardan Wholesale, Inc., at Des Moines, IA, on the one hand, and, on the other, points in CA, NV and TX; and (3) *catalogs* from Minneapolis, MN to points in CA, NV and TX, under a continuing contract, or contracts, with Ardan Wholesale, Inc.

NOTE.—Applicant holds common carrier authority in No. MC 117686 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Des Moines, IA or Omaha, NE.

No. MC 144368 (Sub-No. 1F), filed February 27, 1978. Applicant: GENPAT, INC., 15224 Dixie Highway, Harvey, IL 60426. Applicant's representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Aluminum articles* (except in bulk), from the facilities of Reynolds Metals Co. at McCook, IL, to points in MI, OH, IN, and KY, under continuing contract with Reynolds Metals Co.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Chicago, IL.

No. MC 144035 (Sub-No. 2F), filed February 6, 1978. Applicant: MINUTE AIR, INC., 6 Northway Lane, Latham, NY 12210. Applicant's representative: Neil D. Breslin, 99 Washington Avenue—Suite 1111, Albany, NY 12210. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, in the transportation of: *General commodities* (except Class A & B Explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), restricted to the transportation of traffic having an immediately prior or subsequent movement by air, between Albany County Airport, Albany, NY, and Latham, NY, on the one hand, and on the other points in Ulster and Dutchess Counties, NY, Logan International Airport, MA, and all points in VT and NH East of Routes 22 and 22a, South of Routes 17 and 302, West of Routes 118 and 10, North of Route 9.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Albany, NY.

PASSENGERS

No. MC 52334 (Sub-No. 7F), filed February 21, 1978. Applicant: BOISE-WINNEMUCCA STAGES, INC., 1105 La Pointe Street, Boise, ID 83706. Applicant's representative: A. J. Achabal, (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, in transportation of: *passengers and their baggage* in the same vehicle with passengers from points in Ada and Canyon Counties, ID to points in Elko County, NV in round trip or charter operations.

NOTE.—Common control is not involved. If a hearing is deemed necessary applicant requests that it be held at Boise, ID.

No. MC 96007 (Sub-No. 31F), filed February 24, 1978. Applicant: KENNETH HUDSON, INC., d.b.a. HUDSON BUS LINES, 70 Union Street, Medford, MA 02155. Applicant's representative: Mary E. Kelley, 11 Riverside Avenue, Medford, MA 02155. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in special operations, beginning and ending at Boston, MA, and extending to points in the United States (except AK and HI).

NOTE.—Applicant states it is now authorized to provide special operations service for passengers beginning and ending at points in Suffolk County, MA, except Boston, and points in Essex, Middlesex, Norfolk and Plymouth Counties, MA, and extending to points in the United States (except AK and HI). Applicant also states that it is authorized to provide regular route passenger service between points in such counties, including Boston. (Hearing site: Boston, MA.)

No. MC 143475 (Sub-No. 1), filed December 16, 1977. Applicant: POTOMAC VALLEY TRANSIT AUTHORITY, a corporation, 46 South Main Street, P.O. Box 278, Petersburg, WV 26847. Applicant's representative: J. Douglas Carter (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over regular and irregular routes, transporting: *Passengers with their baggage* in the same vehicle on: (I) Regular routes: (1) Between Romney, WV, and Cumberland, MD, via Springfield and Ridgeley, WV, and serving all intermediate points as follows: From Romney over WV Route 28 to Cumberland, and return over the same route. (2) Between Piedmont, WV, and Cumberland, MD, via Westernport, MD and Keyser, WV, and serving all intermediate points as follows: From Piedmont, over MD Route 36 to Westernport, then from Westernport over MD Route 135 to junction with U.S. Route 220, then from the junction of U.S. Route 220 to Keyser; then from Keyser over WV Route 46 to junction with WV Route 28; then from the junction over WV Route 28 to Cumberland; and return over the same route. The Potomac Valley Transit Authority will not pick up and discharge the same passenger along MD Route 135 between the junction of MD Route 135 and MD Route 36 at Westernport and the junction of MD Route 135 and U.S. Route 220. However, the Transit Authority will discharge passengers whose origin was within WV. The Transit authority will also pick up passengers along MD Route 135 whose destination is within WV. The primary points of origin and destination for the service in WV will be Piedmont and Keyser. (3) Between Romney, WV, and Cumberland, MD via Keyser, WV, and serving all intermediate points as follows: From Romney over U.S. Route 50 to junction with U.S. Route 220; then from the junction over U.S. Route 220 to Keyser; then from Keyser over WV Route 46 to junction with Mineral County Route 9; then from the junction over County Route 9 to junction with WV Route 28; then from the junction over WV Route 28 to Cumberland; and return over the same route. (4) Between Petersburg, WV, and Winchester, VA, via Moorefield and Wardensville, WV, and serving all intermediate points; as follows: From Petersburg over U.S. Route 220 to Moorefield; then from Moorefield over WV Route 55 to Wardensville; then from Wardensville over WV Route 259 to junction with U.S. Route 50; then from the junction over U.S. Route 50 to Winchester; and return over the same route. (5) Between Moorefield, WV, and Harrisonburg, VA, via Petersburg and Franklin, WV, and serving all intermediate points; as follows: From Moorefield over U.S. Route 220 to Franklin; then from Franklin over U.S. Route 33 to Harrisonburg, and return over the same route. (6) Between Petersburg, WV, and Winchester, VA, via Moorefield, Romney and Capon Bridge, WV, and serving all intermediate points as follows: From Petersburg over U.S. Route 220 to junction with U.S. Route 50; then from the junction over U.S. Route 50 to Winchester; and return over the same route. (7) Between Keyser, WV, and

Piedmont, WV, via Westernport, MD, and serving all intermediate points as follows: From Keyser over U.S. Route 220 to junction with MD Route 135; then from the junction over MD Route 135 to Westernport; then from Westernport over MD Route 36 to Piedmont; and return over the same route. The Potomac Valley Transit Authority will not pick up and discharge the same passenger along MD Route 135 between the junction of MD Route 135 and MD Route 36 at Westernport and the junction of MD Route 135 and U.S. Route 220. However, the Transit Authority will discharge passengers whose origin was within WV. The Transit Authority will also pick up passengers along MD Route 135 whose destination is within WV. The primary points of origin and destination for the service in WV will be Piedmont and Keyser. (II) Irregular routes: *Passengers and their baggage* in the same vehicle in round-trip charter operations, beginning and ending in Grant, Hampshire, Hardy, Mineral, and Pendleton Counties, WV, and extending to points in MD, VA, PA, DE, NJ, DC, and that part of the State of NY that is south of Interstate Hwy 84, including all of Long Island.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Petersburg, WV or Cumberland, MD.

WATER CARRIER EXEMPTION APPLICATION

W 1321F, filed March 20, 1978. Applicant: GULFCOAST TRANSIT CO., a Florida Corporation, 4251 Henderson Boulevard, Tampa, FL 33609. Applicant's representative: Paul D. Hardy, P.O. Box 1288, Tampa, FL 33601. Applicant seeks an exemption or certificate of exemption to engage in operation, in interstate or foreign commerce, as a water *contract carrier*, in the transportation of: *Bulk commodities*, between the East and/or Gulf Coast of the United States and the West Coast of the United States (including AK and HI).

NOTE.—Hearing site: Tampa, FL or Washington, DC.

FINANCE APPLICATIONS

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, or rail carriers or motor carriers pursuant to Sections 5(2) or 210a(b) of the Interstate Commerce Act.

An original and two copies of protests against the granting of the requested authority must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protests shall comply with Special Rules 240(c) or 240(d) of the Commission's General Rules of Practice (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

No. MC-F-12960 (Supplemental), (CONSOLIDATED FREIGHTWAYS CORP. OF DELAWARE—POOLING—CITY DELIVERY, INC., ET AL.), published in the September 23, 1976 issue of the FEDERAL REGISTER on page 41822. Pooling arrangement between Consolidated Freightways Corp. of Delaware, of Menlo Park, CA, and O.N.C. Freight Systems, of Palo Alto, CA, was modified, subject to the present republication, by order of the Commission, Review Board 5, dated March 6, 1978, to delete the point of Flagstaff, AZ, and to add the points of Morristown, Wickenberg and Wittman, AZ, and Bandon and Myrtle Point, OR.

No. MC-F-13182 (correction) (NEWMAN BROS. TRUCKING CO., Purchase, E. M. KELLER & CO., INC.), published in the April 21, 1977, issue of the FEDERAL REGISTER, on pages 20739 and 20740. Previous notice should have read as follows: "Note: No. MC-120761 (Sub-No. 21) is a directly related matter."

No. MC-F-13476 (correction) (COLONIAL TRUCKING, INC., Purchase, SUPERIOR MOTOR TRANSPORTATION CO., INC.), published in the January 26, 1978, issue of the FEDERAL REGISTER, on page 3663. Previous notice inadvertently stated the name of the vendee as "Colonial Transportation, Inc." The correct name in Colonial Trucking, Inc. In addition, part of the authority described read (B) irregular routes between (1) Boston, MA and points in MA, but should have read as follows: (B) irregular routes between (1) Lowell, MA and points in MA within 10 miles of Lowell, on the one hand, and, on the other.....

No. MC-F-13504 (correction) (E. E. HENRY, An Individual, Purchase, (Portion), MER-LOU TRANSPORTATION, INC., and Pur. E. E. HENRY, INC.), published in the February 24, 1978, issue of the FEDERAL REGISTER, on page 7791 and 7792. The address of the transferor should have read as follows: Mer-Lou Transportation, Inc., Delaware Avenue and Highway 113, Millsboro, DE 19966.

No. MC-F-13528. Authority sought for purchase by BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59801, of a portion of the operating rights of OSBORNE HIGHWAY EXPRESS, P.O. Box 2329, Dublin, CA 94566 (M. Nolden, Trustee in Bankruptcy), and for acquisition by LOREN D. BREWER AND JESSIE A. BREWER, of control of such rights through the transaction. Applicants' attorneys: Donald W. Smith, Suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240 and Miles L. Kavaller, Suite 315, 315 S. Beverly Drive, Beverly Hills, CA 90212. Operating rights sought to be purchased: *Wood fiberboard* and *wood particleboard* as a *common carrier* over irregular routes from the plantsites of Masonite Corp. and the Georgia-Pacific Corp., near Ukiah, CA, to points in NV, AZ, and CA; *wood particleboard* from the facilities of Fiberboard Corp. at or near Rocklin, CA, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY and; *wood fiberboard* from the facilities of Masonite Corp. at or near Santa Ana, CA to points in CA, NV, AZ, NM, CO, ID, MT, OR, UT, WA, and WY; and *wood fiberboard* from the plantsite of Masonite Corp. near Ukiah, CA to points in CO, ID, MT, NM, OR, UT, WA, and WY; *wood particleboard* from the plantsite of Georgia Pacific Corp. near Ukiah, CA to points in CO, ID, MT, NM, OR, UT, WA, and WY. Vendee is authorized to operate as a *common carrier* in CA, NV, AZ, CO, ID, MT, NM, OR, UT, WA, and WY. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-13530. Authority sought for control by PIERCE ENTERPRISES, INC., 1431 Bedford Street, North Abington, MA 02351 of Andrews & Pierce, Inc. and Christie Transfer, Inc., both of (same address as applicant), and for acquisition by Alan D. Pierce and Ernest W. Pierce, both of same address as applicant, Diane Pierce, Bartlett's Island, Marshfield, MA 02050, and Walter J. Cusick, trustee, 1265 South Main Street, South Yarmouth, MA 02664, of control of such rights through the transaction. Applicant's attorneys: Kenneth B. Williams and James E. Mahoney, 84 State Street, Boston, MA 02109. Operating rights of Andrews & Pierce, Inc. sought to be controlled: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, livestock, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, as a *common carrier* over regular routes, between Boston, MA and Plymouth, MA, serving all intermediate points and named off-route points in MA, between junction MA Hwy 53 and MA Hwy 18 near Weymouth, MA and Bridgewater, MA, serving all intermediate points and named off-route points in MA, between Boston, MA and Westerly, RI, serving all intermediate points and named off-route points in MA and RI, between Boston, MA and Newport, RI, serving all intermediate points and named off-route

points in MA and RI, between Providence, RI and Plymouth, MA, serving all intermediate points, and between Providence, RI and Provincetown, MA, serving all intermediate points and named off-route points including those within ten miles of Providence and those in Dukes and Nantucket Counties, MA. Irregular routes: *Groceries*, from Somerville, MA to points in RI. *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between points in MA, conditionally approved for transfer to Andrews & Pierce, Inc. in Docket No. MC-F-13246. (1) *Malt beverages*, in containers, from South Volney, NY., to points in MA and RI, and (2) *materials, supplies, and equipment* used in the manufacture, sale and distribution of malt beverages (except commodities in bulk, in tank vehicles) from points in MA and RI to South Volney, NY. Operating rights conditionally granted to Christie Transfer, Inc. in Docket No. MC 142918, sought to be controlled: *common carrier*, over irregular routes, of such commodities as are dealt in by wholesale, retail, and chain grocery and food business houses (except commodities in bulk), from the facilities of Proctor & Gamble Manufacturing Co. and Proctor & Gamble Distributing Co., located at Quincy, MA to the facilities of the Frist National Stores, Inc., located at Windsor Locks, CT. Application has not been filed for temporary authority under section 210(a)(b).

NOTE.—Applicant is not a carrier but controls Andrews & Pierce, Inc., and Christie Transfer, Inc., through stock ownership.

No. MC-F-13533. Authority sought for purchase by FEUER TRANSPORTATION, INC., Federal and Knowles Streets, Yonkers, NY 10702, of a portion of the operating rights of Asbestos Eastern Transport (U.S.), Inc., Morrisonville Road, Plattsburgh, NY 12901, and for acquisition by the estate of Jordan Lippner, David B. Lippner, Executor, Federal and Knowles Streets, Yonkers, NY 10702, of control of such rights through the purchase. Applicant's attorneys: A. David Millner, Esq., P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006, and Ronald I. Shapps, Esq., 450 Seventh Avenue, New York, NY 10001. Operating rights sought to be transferred: Certificate No. MC 39123, authorizing the transportation of *general commodities*, except those of unusual value, and except dangerous explosives, household goods as defined in 17 MCC 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, as a *common carrier*, over irregular routes, between points and places in Passaic County, NJ, on the one hand, and, on the other, points and places in Albany, Columbia, points in DE on and east of NY Hwy 30, Dutchess, Fulton, Greene, and points in Hamilton on and east of NY Hwy 30, Montgomery, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, and Scoharie, points in Sullivan on and east of NY Hwy 42, Ulster, Warren, and Washington Counties, NY. Vendee is authorized to operate as a *common carrier* in NY, NJ, and CT. Application has not been filed for temporary authority under section 210a(b).

NOTE.—MC 6415 (Sub-No. 7) is a directly related matter.

No. MC-F-13535. Authority sought for purchase by CROUSE CARTAGE COMPANY, P.O. Box 151, Carroll, IA 51401, of a portion of the operating rights of Redfeather Fast Freight, Inc., 2606 North 11th Street, Omaha, NE 68110, and for acquisition by Paul E. Crouse, P.O. Box 151, Carroll, IA 51401, of control of such rights through the transaction. Vendee's attorney: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102; Vendor's attorney: Arlyn Westergren, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Operating rights sought to be transferred: *Meats, meat products, and meat byproducts*, and articles distributed by meat packinghouses, as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite and storage facilities utilized by Wilson & Co., Inc., at or near Cherokee, IA, to points in IL, KS, MO, and WI, with restriction. Vendee is authorized to operate as a *common carrier* in 48 States. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-13539. Authority sought for purchase by COUNTRY WIDE TRUCK SERVICE, INC., 1110 South Reservoir Street, Pomona, CA 91766, of the operating rights of B & P Refrigerated Lines, Inc., 1415 East Ninth Street, Pomona, CA 91766, and for acquisition by Stuart F. Jaquay, 446 East Jefferson Street, Pomona, CA 91767, of control of the rights through purchase. Applicant's attorney: Paul M. Daniell, P.O. Box 872, Atlanta, GA 30301. Operating rights sought to be purchased: *Foodstuffs* (not frozen), in containers, in vehicles equipped with mechanical refrigeration, as a contract carrier over irregular routes, (1) from the facilities of Avoset Food Corp. at Gustine, CA to points in CO, CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, ND, OH, PA, RI, SD, VT, VA, WV, WI, and DC, with no transportation for compensation on return except as otherwise authorized, and (2) from the above-named shipper's facilities at Washington Court House, OH, to points, in AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, KS, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, and DC, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts with Avoset Food Corp. of Oakland, CA. The operating rights are authorized in Permit No. MC 136574. Vendee is authorized to operate as a contract carrier pursuant to permits issued in MC 138941 in all the States in the United States (except AK and HI). Application has not been filed for temporary authority under section 210a(b).

No. MC-F-13541. Authority sought for purchase by ROAD RUNNER TRUCKING, INC., P.O. Box 37491, Omaha, NE 68137, of a portion of the operating rights of Schultz Transit, Inc., 323 Bridge Street, Winona, MN 55987, and for acquisition by road Runner Trucking, Inc., of Omaha, NE 68137, of control of such rights through the purchase. Applicants' attorney: Thomas J. Beener, P.O. Box 5000, Waterloo, IA 50704. Operating rights sought to be transferred: *Meats, meat products, meat byproducts*, and articles distributed by meat packinghouses as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), as a *common carrier* over irregular routes from the facilities of Illini Beef Packers, Inc., at or near Joslin, IL, to points in AZ, CA, and NV, with no transportation for compensation on return except as otherwise authorized with restriction; *magazines and periodicals*, from Pewaukee, WI, to Los Angeles and San Francisco, CA; Denver, CO and Seattle, WA, with no compensation on return except as otherwise authorized. Vendee is authorized to operate as a *common carrier* in AZ, CA, CO, ID, IL, IA, KS, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-13543. Authority sought for purchase by SUWAK TRUCKING CO., 1105 Fayette Street, Washington, PA 443311, of a portion of the operating rights of Fischbach Trucking Co., 921 Sherman Street, Akron, OH 44311, and for acquisition by John Suwak, 1105 Fayette Street, Washington, PA 44311, of control of such rights through the purchase. Applicant's attorney: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219

for transferee; John P. McMahon, 100 East Broad Street, Columbus, OH 43215, for transferor. Operating rights sought to be transferred: That portion of its certificate of public convenience and necessity at Docket No. MC 111398 (Sub-No. 16) covering the transportation of general commodities, except commodities in bulk, and motor vehicles, as a *common carrier* over irregular routes, between Akron, OH, on the one hand, and, on the other, points in that part of OH south of a line beginning at Martins Ferry, OH and extending along U.S. Hwy 250 to Wooster, OH, then along U.S. Hwy 30 to the OH-IN State line. Vendee is authorized to operate as a common carrier in PA, OH, WV, MD, DE, NJ, NY, MA, CT, IL, IN, RI, KY, MI, and DC. Application has been filed for temporary authority under section 210a(b). Hearing site: Washington, DC or Pittsburgh, PA.

NOTE.—MC 111956 (Sub-No. 42) is a directly related matter.

No. MC-F-13544. Authority sought for purchase by KUHNLE BROTHERS, INC., P.O Box 128, Chagrin Falls, OH, 44022, of the operating rights and property of Walter Pulley d.b.a. Pulley Bulk Transport, 9 Zephyr Drive, Westfield, MA., 01085, and for acquisition by Thomas G. Kuhnle, P.O. Box 128, Chagrin Falls, OH, 44022, and Kim T. Kuhnle, P.O. Box 128, Chagrin Falls, OH, 44022, of control of such rights through the transaction. Applicants' attorneys: Kenneth T. Johnson and Ronald W. Malin, Bankers Trust Building, Jamestown, NY, 14701. Operating rights sought to be transferred: *Flour*, as a *common carrier*, over irregular routes from Buffalo, NY, to points in PA, NJ, MA, OH, CT, ME, NH, RI, and VT, with no transportation for compensation on return except as otherwise authorized. Transferee is presently authorized to operate as a common carrier under MC 138194 in NY, PA, MD, DE, NJ, MA, CT, VT, NH, OH, and as contract carrier under MC 134235 in OH, IN, MI, IL, PA, NY, WV. Application has been filed for temporary authority under section 210a(b).

OPERATING RIGHTS APPLICATION(S) DIRECTLY RELATED TO FINANCE PROCEEDINGS

The following operating rights application(s) are filed in connection with pending finance applications under section 5(2) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under section 212(b) of the Interstate Commerce Act.

An original and two copies of protests to the granting of the authorities must be filed with the Commission within 30 days of this notice. All pleadings and documents must clearly specify the "F" suffix where the docket is so identified in this notice. Protests shall comply with special rule 247(e) of the Commission's general rules of practice (49 CFR 100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative, or applicant if no representative is named.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 6415 (Sub-No. 7F), filed March 6, 1978. Applicant: FEUER TRANSPORTATION, INC., Federal and Knowles Streets, Yonkers, NY 10702. Applicant's representative: Arthur Liberstein, 888 7th Avenue (15th floor), New York, NY 10019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading), between New York, NY,on the one hand, and, on the other, points in Hudson, Essex, Bergen, Union, Middlesex, Monmouth, Somerset and Morris Counties, NJ, those in that part of Fairfield County, CT, on and west of a line beginning at the NY-CT State line and extending along CT Hwy 29 to Long Island Sound, and those in Nassau, Suffolk, Albany, Columbia, points in DE on and east of NY Hwy 30, Dutchess, Fulton, Greene, points in Hamilton on and east of NY Hwy 30, Montgomery, Orange, Putnum, Rensselaer, Rockland, Saratoga, Schenectady, Scoharie, points in Sullivan on and east of NY Hwy 42, Ulster, Warren, and Washington Counties, NY.

NOTE.—The purpose of this application is to eliminate the gateway of Passaic County, NJ, and is directly related to MC-F-13533—Purchase (Portion—Asbestos Eastern Transport (U.S.), Inc., published in a previous section of this FEDERAL REGISTER issue. Applicant states, that as pertinent to this application, it is authorized to serve points in NY, NJ and CT. If a hearing is deemed necessary, applicant requests that it be held at New York, NY.

No. MC 111956 (Sub-No. 42F), filed March 23, 1978. Applicant: SUWAK TRUCKING CO., a corporation, 1105 Fayette Street, Washington, PA 15301. Applicant's representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, motor vehicles and commodities requiring special equipment: (1) between Akron, OH and Columbus, OH, from Akron over U.S. Hwy 224 (also portion Interstate Hwy 76) to Lodi, then over U.S. Hwy 42 to DE then via U.S. Hwy 23 to Columbus, and return over the same routes, from Akron over Interstate 76 to its junction with Interstate 71, then over Interstate 71 to Columbus, and return over the same routes; (2) between Akron, OH and Dayton, OH, from Akron over U.S. Hwy 224 (also portion Interstate Hwy 76) to Lodi, then over U.S. Hwy 42 to its junction with U.S. Hwy 40, then over U.S. Hwy 40 to its junction with OH Hwy 4, then over OH Hwy 4 to Dayton, and return over the same routes, from Akron over Interstate 76 to its junction with Interstate 71, then over Interstate 71 to its junction with Interstate 270, then over Interstate 270 to its junction with Interstate 70, then over Interstate 70 to its junction with Interstate 75, then over Interstate 75 to Dayton, and return over the same routes, (3) between Akron, OH and Cincinnati, OH, from Akron over U.S. Hwy 224 (also portion Interstate Hwy 76) to Lodi, then over U.S. Hwy 42 to Cincinnati, and return over the same routes, from Akron over U.S. Hwy 224 (also portion Interstate Hwy 76) to Lodi, then over U.S. Hwy 42 to its junction with U.S. Hwy 40, then over U.S. Hwy 40 to Springfield, then over OH Hwy 4 to its junction with U.S. Hwy 127, then over U.S. Hwy 127 to Cincinnati, and return over the same routes, from Akron over Interstate 76 to its junction with Interstate 71, then over Interstate 71 to Cincinnati and return over the same routes.

NOTE.—The purpose of this application is to convert to regular route authority part of an irregular route authority at MC 111398 (Sub-No. 16) sought to be acquired by applicant from Fischbach Trucking Co. The requested regular route authority will be tacked at Akron, OH, to provide service between the described regular route points in OH and points and areas authorized to be served by applicant in general commodity service in MD, OH, PA, and WV. This is a matter directly related to a section 5(2) application docketed at MC-F-13543 Suwak Trucking Co.—Purchase (Portion) Fischback Trucking Co., which is published in a previous section of this FEDERAL REGISTER issue. (Hearing sites: Washington, DC, Pittsburgh, PA, Columbus, OH.)

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this FEDERAL REGISTER notice.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its request.

MOTOR CARRIERS OF PROPERTY

No. MC 2202 (Deviation No. 166), ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Boulevard, Akron, OH 44309, filed March 2, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From New Braunfels, TX, over TX Hwy 46 to Seguin, TX, and (2) from San Marcos, TX, over TX Hwy 123 to Seguin, TX, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From San Marcos, TX, over U.S. Hwy 81 to San Antonio, then over U.S. Hwy 90 to Seguin, TX, and return over the same route.

No. MC 2900 (Deviation No. 35), RYDER TRUCK LINES, INC., 2050 Kings Road, P.O. Box 2408, Jacksonville, FL 32203, filed February 23, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Birmingham, AL, over Interstate Hwy 65 to junction AL Hwy 17, then over AL Hwy 17 to junction AL Hwy 27, then over AL Hwy 27 to junction U.S. Hwy 29, then over U.S. Hwy 29 to Pensacola, FL, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Birmingham, AL, over U.S. Hwy 280 to Columbus, GA, then over U.S. Hwy 27 to Cusetta, GA, then over U.S. Hwy 280 to Richland, GA, then over GA Hwy 55 to Dawson, GA, then over GA Hwy 50 to Cuthbert, GA, then over U.S. Hwy 27 to Colquitt, GA, then over GA Hwy 91 to GA-FL State line, then over FL Hwy 2 to junction FL Hwy 165, then over FL Hwy 165 to Greenwood, FL, then over FL Hwy 71 to Marianna, FL, then over U.S. Hwy 90 to Pensacola, FL, and return over the same route.

No. MC 14252 (Deviation No. 5), COMMERCIAL LOVELACE MOTOR FREIGHT, INC., 3400 Refugee Road, Columbus, OH 43227, filed February 22, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From St. Louis, MO, over Interstate Hwy 64 to Charleston, WV, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From St. Louis, MO, over U.S. Hwy 40 to Columbus, OH, then over U.S. Hwy 33 to Pomeroy, OH, then over WV Hwy 62 to Point Pleasant, WV, then over U.S. Hwy 35 to Charleston, WV, and return over the same route.

No. MC 14252 (Deviation No. 6), COMMERCIAL LOVELACE MOTOR FREIGHT, INC., 3400 Refugee Road, Columbus, OH 43227, filed March 8, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From St. Louis, MO, over Interstate Hwy 64 to Junction Interstate Hwy 71, then over Interstate Hwy 71 to Cincinnati, OH, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From St. Louis, MO, over U.S. Hwy 40 to Junction U.S. Hwy 127, then over U.S. Hwy 127 to Cincinnati, OH, and return over the same route.

No. MC 30605 (Deviation No. 28), THE SANTA FE TRAIL TRANSPORTATION CO., 433 East Waterman Street, P.O. Box 56, Wichita, KS 67201, filed March 1, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Dallas, TX, over Interstate Hwy 35E to junction Interstate Hwy 35W, then over Interstate Hwy 35 to Temple, TX, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Dallas, TX, over U.S. Hwy 67 to Cleburne, TX, then over TX Hwy 174 to junction TX Hwy 6, then over TX Hwy 6 to junction TX Hwy 317, then over TX Hwy 317 to TX Hwy 36, then over TX Hwy 36 to Temple, TX, and return over the same route.

No. MC 35628 (Deviation No. 33), INTERSTATE MOTOR FREIGHT SYSTEM, 134 Grandville Avenue SW., Grand Rapids, MI 49503, filed February 28, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From junction U.S. Hwy 25W and Interstate Hwy 40, over Interstate Hwy 40 to junction Interstate Hwy 81, then over Interstate Hwy 81 to junction U.S. Hwy 11 near Middlesex, PA, and (2) From junction U.S. Hwy 25W and Interstate Hwy 40, over Interstate Hwy 40 to junction Interstate Hwy 81, then over Interstate Hwy 81 to junction Progress Road near Penbrook, PA, and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Knoxville, TN, over unnumbered TN Hwy to junction U.S. Hwy 25W, then over U.S. Hwy 25W to Corbin, KY, then over U.S. Hwy 25 to junction KY Hwy 490, then over KY Hwy 490 to Livingston, KY, then over U.S. Hwy 25 to Cincinnati, OH, then over OH Hwy 3 to Columbus, OH, then over U.S. Hwy 40 to Washington, PA, then over U.S. Hwy 19 to Pittsburgh, PA, then over U.S. Hwy 30 to junction PA Turnpike (Interstate Hwy 76) near Breezewood, PA, then over PA Turnpike (Interstate Hwy 76) to junction U.S. Hwy 11 near Middlesex, PA, then over U.S. Hwy 11 to Harrisburg, PA, then over unnumbered Hwy to junction Interstate Hwy 81 and Progress Road near Penbrook, PA, and return over the same route.

No. MC 42487 (Deviation No. 117), CONSOLIDATED FREIGHTWAYS CORP. OF DELAWARE, P.O. Box 3062, Portland, OR 97208, filed February 22, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Charlotte, NC, over Interstate Hwy 85 to Atlanta, GA, then over Interstate Hwy 285 to junction Interstate Hwy 20, then over Interstate Hwy 20 to junction U.S. Hwy 78, then over U.S. Hwy 78 to junction U.S. Hwy 278, then over U.S. Hwy 278 to junction U.S. Hwy 231 near Brooksville, AL, then over U.S. Hwy 231 to junction AL Hwy 67 near Summit, AL, then over AL Hwy 67 to junction U.S. Hwy 31 near Decatur, AL, then over U.S. Hwy 31 to junction Alternate U.S. Hwy 72, then over Alternate U.S. Hwy 72 to junction Interstate Hwy 240, then over Interstate Hwy 240 to Memphis, TN, then over Interstate Hwy 240 to junction Interstate Hwy 55, then over Interstate Hwy 55 to junction U.S. Hwy 63 near Gilmore, AR, then over U.S. Hwy 63 to junction U.S. Hwy 60 near Willow Springs, MO, then over U.S. Hwy 60 to junction MO Hwy 13 at Springfield, MO, then over MO Hwy 13 to junction MO Hwy 7 near Clinton, MO, then over MO Hwy 7 to junction U.S. Hwy 71 near Harrisonville, MO, then over U.S. Hwy 71 to Kansas City, MO, and return over the same route, for operating convenience only. The notice indicates that the

carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Charlotte, NC, over U.S. Hwy 74 to Asheville, NC, then over U.S. Hwy 25 to Newport, TN, then over U.S. Hwy 25E to Corbin, KY, then over U.S. Hwy 25 to Cincinnati, OH, then over U.S. Hwy 50 to St. Louis, MO, then over U.S. Hwy 40 to Kansas City, Mo, and return over the same route.

No. MC 48958 (Deviation No. 83), ILLINOIS-CALIFORNIA EXPRESS, INC., 510 East 51st Avenue, P.O. Box 16404, Denver, CO 80216, filed February 28, 1978. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From Kansas City, MO, over Interstate Hwy 35 to junction U.S. Hwy 36, then over U.S. Hwy 36 to junction Interstate Hwy 55, then over Interstate Hwy 55 to Chicago, IL, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Kansas City, MO, over U.S. Hwy 40 to junction U.S. Hwy 73, then over U.S. Hwy 73 to junction U.S. Hwy 34, then over U.S. Hwy 34 to junction IL Hwy 116, then over IL Hwy 116 to Peoria, IL, then over U.S. Hwy 24 to Chenoa, IL, then over U.S. Hwy 66 to Chicago, IL, and return over the same route.

Motor Carrier Intrastate Application(s)

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 206(a)(6) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's General Rules of Practice (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

CA Docket No. A. 57545 filed August 31, 1977. Applicant: BALDWIN TRUCKING, INC., 192-98th Avenue, Oakland, CA 94603. Applicant's representative: Michael C. Leiden, 2990 7th Street, Berkeley, CA 94710. Certificate of public convenience and necessity sought to operate a freight service, as follows: Transportation of: *General commodities* between all points and places in the San Francisco Territory as described in Note A (except that pursuant to the authority herein granted, carrier shall not transport any shipments of): 1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4-B. 2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis. 3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stages, swine or wethers. 4. Liquids, compressed gases, commodities in seimplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles. 5. Commodities when transported in bulk in dump trucks or in hopper-type trucks. 6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit. 7. Cement. 8. Logs. 9. Commodities of unusual value. 10. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment. 11. Fresh fruits and vegetables.

Note A.—San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; then easterly along said County Line to a point 1 mile west of State Hwy 82; southerly along an imaginary line 1 mile west of and paralleling State Hwy 82 to its intersection with Southern Pacific Co. right-of-way at Arastradero Road; southeasterly along the Southern Pacific Co. right-of-way to Pollard Road, including industries served by the Southern Pacific Co. spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to West Parr Avenue; easterly along West Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Co. right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Hwy 82; northwesterly along State Hwy 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Hwy 238 (Oakland Road); northerly along State Hwy 238 to Warm Springs; northerly along State Hwy 238 (Mission Boulevard) via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard and MacArthur Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard to Warren Boulevard (State Highway 13); northerly along Warren Boulevard to Broadway Terrace, westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the Campus Boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Hwy 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to California Public Utilities Commission, California State Building, 350 McAllister Street, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

FL Docket No. 760122-CCT, filed February 10, 1978. Applicant: MULLINS, INC., 3302 Enterprise Road, Fort Pierce, FL 33450. Applicant's representative: John P. Bond, 2766 Douglas Road, Miami, FL 33133. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of: *Commodities,* which because of size, weight, and bulk, require special handling and equipment; construction equipment and materials; and plastic pipe, bundled or banded, in lengths of 12 ft. or more, between all points and places in the State of FL. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to Florida Public Service Commission, 700 South Adams Street, Tallahassee, FL 32304, and should not be directed to the Interstate Commerce Commission.

FL Docket No. 780125-CCT, filed March 1, 1978. Applicant: MERCHANT TRANSPORT, INC., 5409 Georgia Avenue, P.O. Box 6115, West Palm Beach, FL. Applicant's representative: Norman J. Bolinger, 1729 Gulf Life Tower, Jacksonville, FL. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of: *Building and construction material and supplies,* in truckload lots, on flatbed

equipment only, between points in FL. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to Florida Public Service Commission, 700 South Adams Street, Tallahassee, FL 32304, and should not be directed to the Interstate Commerce Commission.

FL Docket No. 780134-LCCT, filed March 3, 1978. Applicant: JOHN R. KREIS, INC., 6080 Greenland Road, Jacksonville, FL 32223. Applicant's representative: O.C. Beakes, 836 Riverside Avenue, Jacksonville, FL 32204. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of: *Roadbuilding and construction aggregates* in bulk, in straight bodied dump trucks (not tractor semi-trailer units), between points in Duval, St. Johns, Clay, Nassau and Baker Counties, FL. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to Florida Public Service Commission, 700 South Adams Street, Tallahassee, FL 32304, and should not be directed to the Interstate Commerce Commission.

MO Docket No. T-25, 499 Sub 4, filed February 22, 1978. Applicant: SOUTHERN MISSOURI FREIGHT, INC., P.O. Box 1091 C S.S., Springfield, MO 65803. Applicant's representative: Herman W. Huber, 101 East High Street, Jefferson City, MO 65101. Certificate of public convenience and necessity sought to operate a freight service over regular routes, as follows: Transportation of: *General commodities* (except those of unusual value, dangerous explosives, uncrated household goods as defined by the Commission, commodities in bulk and those requiring special equipment): From Springifeld, MO over U.S. Hwy 60 to its junction with Business Route 60, at or near Aurora, MO, then over Business Route 60 to its junction with U.S. Hwy 60, at or near Verona, MO, and return, serving from, to and between Marionville, Aurora and Verona, MO, as intermediate points, in connection with carrier's regular route operations between Springfield, MO, and Monett, MO, over U.S. Hwy 60 and serving the junctions of U.S. Hwy 60 and Business Route 60 for purpose of joinder. Intrastate, interstate and foreign commerce authority sought. Hearing: April 17, 18, and 19, 1978, 10 a.m., Public Service Commission, 100 East Capitol Avenue Jefferson City, MO 65101. Requests for procedural information should be addressed to Missouri Public Service Commission, Jefferson Building, Jefferson City, MO 65101, and should not be directed to the Interstate Commerce Commission.

NY Docket No. T-863, filed February 10, 1978. Applicant: SHAY's SERVICE, INC., North Main Street, Dansville, NY 14437. Applicant's representative: Herbert M. Canter & Benjamin D. Levine, 305 Montgomery Street, Syracuse, NY 13202. Certificate of public convenience and necessity sought to operate a freight service over regular routes as follows: Transportation of: *General commodities*, between all points in the following counties: Allegany, Cattaragus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Schuyler, Steuben, and Wyoming, with authority to transport *general commodites*, as defined, being retained (except as authorized above), over the following regular routes: Route 1: Between Rochester and Horseheads, as follows: From Rochester over NY 96 to junction NY 332: then over NY 332 to Canandaigua; then over U.S. 20 to Geneva; and then over NY 14 to Horseheads, returning between all intermediate points. Route 2: Between Geneva and North Cohocton over NY 245, including service from, to and between all intermediate points. Route 3: Between Elmira and Binghamton over NY 17, including service from, to, and between all intermediate points. Route 4: Between Owego and Binghamton over NY 17C, including service from, to, and between all intermediate points. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to NY State Department of Transportation, 1220 Washington Avenue, Building 5, State Campus, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

NY Docket No. T-1318, filed January 31, 1978. Applicant: CRAW CARTING, INC., 160 Despatch Drive, P.O. Box 267, East Rochester, NY 14445. Applicant's representative: Herbert M. Canter and Benjamin D. Levine, 305 Montgomery Street, Syracuse, NY 13202. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of: *General commodities*, from all points in Livingston County, to all points in Erie and Wyoming Counties, from all points in Wyoming County, to all points in Niagara County. Intrastate, interstate, and foreign commerce authority sought. Hearing: Date, time, and place not yet fixed. Requests for procedural information should be addressed to NY State Department of Transportation, 1220 Washington Avenue, Building 5, State Campus, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

NY Docket No. T-2237, filed February 23, 1978. Applicant: TEAL'S EXPRESS INC., Laura Street, Lyons Falls, NY. Applicant's representative: Roy D. Pinsky, 345 South Warren Street, Syracuse, NY 13202. Certificate of public convenience and necessity sought to operate a freight service over regular routes, as follows, transportation of: *General commodities*, from Rome to Utica, via NY 49 and 5, including service to the following off-route points, villages: New York Mills (Oneida County), Whitesboro (Oneida County); from Cortland to Syracuse via U.S. 11 and U.S. 81, including service to the off-route point of the village of Groton (Tompkins County); from Oswego to Syracuse, via NY Hwy 57, including service to all intermediate points. Intrastate, interstate, and foreign commerce authority sought. Hearing: Date, time, and place not yet fixed. Requests for procedural information should be addressed to NY State Department of Transportation, 1220 Washington Avenue, Building 5, State Campus, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

OK Docket No. MC 23466 (Sub 8), filed March 6, 1978. Applicant: CENTRAL OKLAHOMA FREIGHT LINES, INC., 2945 North Toledo, Tulsa, OK 74115. Applicant's representative: Rufus H. Lawson, 106 Bixler Building, 2400 Northwest 23rd Street, Oklahoma City, OK 73107. Certificate of public convenience and necessity sought to operate a freight service over regular routes as follows, transportation of: *General commodities* (except classes A and B explosives, commodities in bulk, articles of unusual value, household goods as defined by the Commission, and commodities requiring special equipment), between Holdenville, OK, and Durant, OK, via U.S. Hwy 270 to McAlester, OK, then via U.S. Hwy 69 to Durant, OK, serving all intermediate points and the off-route points of Stuart, Haywood, U.S. Army Ammunition Depot at or near Savanna and Haywood, OK, Kiowa and Caney, OK. Alternate route from Holdenville, OK, to Durant, OK, via State Hwy 48, serving no intermediate points, for operating convenience only. Intrastate, interstate, and foreign commerce authority sought. Hearing: Date, June 14, 1978, at 9 a.m. at Oklahoma Corporation Commission, 2nd Floor, Jim Thorpe Building, Oklahoma City, OK 73105. Requests for procedural information should be addressed to Oklahoma Corporation Commission, Jim Thorpe Office Building, Oklahoma City, OK, should not be directed to the Interstate Commerce Commission.

By the Commission.

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

[FR Doc. 78-9015 Filed 4-5-78; 8:45 am]

[1505-01]

INTERSTATE COMMERCE COMMISSION

[Volume No. 53]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), RAILROAD ABANDONMENTS, ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS

Correction

In FR Doc. 78-1424, appearing at page 2790 in the issue for Thursday, January 19, 1978, on page 2803, middle column, the last motor carrier application number reading "No. MC 134575 (Sub-No. 23)" should read "No. MC 134574 (Sub-No. 23)".

[1505-01]

[Volume No. 61]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), RAILROAD ABANDONMENTS, ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS

Correction

In FR Doc. 78-4174, appearing at page 6879 in the issue for Thursday, February 16, 1978, on page 6897, first column, the first motor carrier application number now reading "No. MC 14064 (Sub-No. 3)", should read "No. MC 140464 (Sub-No. 3)".

[1505-01]

[Volume No. 63]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

Correction

In FR Doc. 78-4822, appearing at page 7754 in the issue for Friday, February 24, 1978, on page 7757, third column, paragraph (2) of No. MC 100449 (Sub-No. 86) should read as follows: "from the facilities utilized by Sioux Preme Packing Co. located at or near Sioux Center and Sioux City, IA, to points in NE, MO, KS, OK, and TX."

[1505-01]

[Volume No. 64]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), RAILROAD ABANDONMENTS, ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS

Correction

In Fr Doc. 78-4823, appearing at page 7766 in the issue for Friday, February 24, 1978, on page 7779, first column, tenth line of No. MC 123407 (Sub-No. 424), insert a comma between "*Building*" and "*wall and insulating boards,*".

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 627]

ASSIGNMENT OF HEARINGS

APRIL 3, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No. MC 116073 (Sub-No. 365), Barrett Mobile Home Transport, Inc., now being assigned June 6, 1978 (9 days), at Elkhart, IN, in a hearing room to be later designated.

No. MC 143837, Good Will Tours, Inc., now being assigned June 6, 1978 (2 days), at Topeka, KS, in a hearing room to be later designated.

No. MC 141804 (Sub-No. 77), Western Express, Division of Interstate Rental, now being assigned May 31, 1978 (3 days), at San Francisco, CA, in a hearing room to be later designated.

No. MC 66505 (Sub-No. 5), Peerless Stages, Inc., now being assigned June 5, 1978 (5 days), at San Francisco, CA, in a hearing room to be later designated.

No. MC 143178 (Sub-No. 1), Golden State Coaches, Inc., now being assigned June 12, 1978 (5 days), at Chico, CA, in a hearing room to be later designated.

MC 99498 (Sub-No. 5), Jimmy Stein Motor Lines, Inc., is now assigned for hearing June 5, 1978 (1 week) at Montgomery, AL, at a location to be later designated.

MC-F-13374, J. B. Hunt Transport, Inc.—Control and Merger—E. L. Reddish Transportation, Inc. and No. MC 135797 (Sub-No. 84), J. B. Hunt Transport, Inc., now being assigned for May 31, 1978 (3 days), at Little Rock, AR, in a hearing room to be later designated.

AB 43 (Sub-No. 38), Illinois Central Gulf Railroad Co., abandonment near Rosedale and Greenville, in Washington and Bolivar Counties, MS, now being assigned June 5, 1978 (1 week), at Rosedale, MS, in a hearing room to be later designated.

MC 56679 (Sub-No. 93), Brown Transport Corp., is now assigned for hearing June 5, 1978 (2 weeks) at Atlanta, GA, at a location to be later designated.

MC 120436 (Sub-No. 2), Nussbaum Trucking, Inc., now assigned for prehearing conference April 10, 1978 at Washington, DC, is canceled and reassigned for prehearing conference April 10, 1978 at 1 p.m. local time at Chicago, IL, and will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 107295 (Sub-No. 861), Pre-Fab Transit Co., now being assigned May 31, 1978, (3 days), at Chicago, IL, in a hearing room to be later designated.

AB 7 (Sub-No. 37), Chicago, Milwaukee, St. Paul and Pacific Railroad Co.—Abandonment near Sparta and Viroqua, in Monroe and Vernon Counties, WI, now being assigned June 5, 1978, (1 week), at Viroqua, WI, in a hearing room to be later designated.

MC 134038 (Sub-No. 6), Majors Transit, Inc., now being assigned May 22, 1978, (1 week) at Louisville, KY, in a hearing room to be later designated.

MC 128879 (Sub-No. 25), C-B Truck Lines, Inc., is now assigned for hearing May 31, 1978 (3 days) at Austin, TX, in a hearing room to be later designated.

MC 117883 (Sub-No. 222), Subler Transfer, Inc., now being assigned June 26, 1978, (1 week) at Detroit, MI, in a hearing room to be later designated.

MC 52704 (Sub-No. 152), Glenn McClendon Trucking Co., Inc., is now assigned for hearing July 11, 1978 (1 day) at Atlanta, GA, in a hearing room to be later designated.

MC 78276 (Sub-No. 11), Mazzeo & Sons Express, is now assigned for hearing July 12, 1978 (3 days) at Atlanta, GA, at a hearing room to be later designated.

MC 59150 (Sub-No. 103), Ploof Truck Lines, Inc., is now assigned for hearing July 17, 1978 (2 days) at Jacksonville, FL, in a hearing room to be later designated.

MC 121120 (Sub-No. 4), Southern Garment Distributing Corp., is now assigned for hearing July 19, 1978 (3 days), at Orlando, FL, in a hearing room to be later designated.

MC 114211 (Sub-No. 317), Warren Transport, Inc., now being assigned May 31, 1978 (3 days), at Denver, CO, in a hearing room to be later designated.

MC 105006 (Sub-No. 5), L. L. Smith Trucking, a corporation, now being assigned June 5, 1978 (5 days), at Denver, CO, in a hearing room to be later designated.

MC 128270 (Sub-No. 24), Rediehs Interstate, Inc., now being assigned June 12, 1978 (3 days), at Denver, CO, in a hearing room to be later designated.

FF 504, Gray International Freight Forwarding Co., now being assigned June 15, 1978 (2 days), at Denver, CO, in a hearing room to be later designated.

MC 123048 (Sub-No. 368), Diamond Transportation System, Inc., now being assigned June 6, 1978 (1 day), at Chicago, IL, in a hearing room to be later designated.

MC 124170 (Sub-No. 171), Frostways, Inc., now being assigned June 7, 1978 at Chicago, IL, in a hearing room to be later designated.

MC 133841 (Sub-No. 4), Dan Barclay, Inc. is now assigned for hearing June 5, 1978 (1 day), at New York, NY, in a hearing room to be later designated.

MC 118377 (Sub-No. 7), Richard R. Johncox, is now assigned for hearing June 6, 1978 (1 day), at New York, NY, in a hearing room to be later designated.

FF 416 (Sub-No. 1), Imperial Carriers, Inc., is now assigned for hearing June 7, 1978 (3 days), at New York, NY, in a hearing room to be later designated.

AB 55 (Sub-No. 15), Seaboard Coast Line Railroad Co. Abandonment near Tunis,

NC and Nurney, VA, in Gates and Hertford Counties, NC and the City of Suffolk, VA, now being assigned June 5, 1978 (1 week), at Gates, NC in a hearing room to be later designated.

MC-F-13194, Pacific Intermountain Express—Purchase (Portion)—Best-Way Transportation; MC 730 Sub-409, Pacific Intermountain Express Co.; and MC-F-13204, System 99—Purchase (Portion)—Best-Way Transportation, are now assigned for hearing June 6, 1978 (14 days), at Phoenix, AZ, at a hearing room location to be later designated.

MC 103926 (Sub-No. 8M1), W. T. Mayfield Sons Trucking Co., now being assigned June 8, 1978 (2 days), at Atlanta, GA, in a hearing room to be later designated.

MC 115841 (Sub-No. 553), Colonial Refrigerated Transportation Inc., now being assigned June 7, 1978 (1 day), at Atlanta, GA, in a hearing room to be later designated.

MC 123407 (Sub-No. 429), Sawyer Transport, Inc., and MC 124947 Sub 78, Machinery Transports, Inc., now being assigned June 12, 1978 (1 week), at Atlanta, GA, in a hearing room to be later designated.

MC-C-9820, National Trailer Convoy, Inc., now being assigned June 26, 1978 (2 days), at Atlanta, GA, in a hearing room to be later designated.

MC-F-13220, The Mason and Dixon Lines, Inc.—Control and Merger—General Motor Lines, Inc.; MC 59583 Subs 159 and 162, The Mason and Dixon Lines, Inc., Kingsport, TN, are now assigned for hearing June 19, 1978 (1 week), at Raleigh, NC, in a hearing room to be later designated.

MC-C-9860, Carolina Coach Co., et al v. Williams Bus Rental, is now assigned for hearing June 15, 1978 (2 days), at Raleigh, NC, in a hearing room to be later designated.

MC 113651 (Sub-No. 237), Indiana Refrigerator Lines, Inc., is assigned for hearing June 1, 1978 at Kansas City, MO, and will be held at Room 609 Federal Office Building, 911 Walnut Street.

FD 28145, Merchants Delivery Co.—Investigation of Practices, is assigned for hearing May 31, 1978 at Kansas City, MO, and will be held at Room 609 Federal Office Building, 911 Walnut Street.

MC 115669 (Sub-No. 165, Dahlsten Truck Line, Inc., is assigned for hearing June 5, 1978 at Kansas City, MO, and will be held at Room 609 Federal Office Building.

MC 130281 (Sub-No. 2), Holiday Travel, Inc., is assigned for hearing May 16, 1978 at Eau Claire, WI, and will be held at County Board Room 279, 2nd Floor, County Courthouse 721 Oxford.

AB 43 (Sub-No. 28), Illinois Central Gulf Railroad Co., abandonment between Freeport, IL, and Madison, WI, is assigned for hearing May 15, 1978, at Monroe, WI, and will be held at Council Chambers County Building, 1110 18th Ave.

AB 1 (Sub-No. 41), Chicago and North Western Transportation Co., abandonment between Klevenville and Fennimore, including Lancaster Junction to Lancaster, Monfort Junction to Cuba City and Ipswich to Platteville in Dane, Iowa, Lafayette, and Grant Counties, WI, is assigned for hearing May 8, 1978, at Dodgeville, WI, and will be held at Armory, 410 East Leffler Street.

MC 106074 (Sub-No. 48), B&P Motor Lines, Inc., and MC 123407 (Sub-No. 409), Sawyer Transport, Inc., and MC 115162 (Sub-No. 394), Poole Truck Line, Inc., is assigned for hearing May 17, 1978, at Kansas City, MO, and will be held at Room 609, Federal Office Building, 911 Walnut Street.

MCF 13304, Becker Corp.—control and merger—Royal Transportation, Inc., is assigned for hearing May 24, 1978, at Kansas City, MO, and will be held at Room 609, Federal Office Building.

MC 52460 (Sub-No. 199), Ellex Transportation, Inc., and MC 112822 (Sub-No. 436), Bray Lines, Inc., and MC 114632 (Sub-No. 119), Apple Lines, Inc., and MC 117119 (Sub-No. 654), Willis Shaw Frozen Express, Inc., and MC 117815 (Sub-No. 266), Pulley Freight Lines, Inc., and MC 117954 (Sub-No. 25), H. L. Herrin, Jr., d.b.a. H. L. Herrin Trucking Co., and MC 118142 (Sub-No. 155), M. Bruenger and Co., Inc., and MC 119741 (Sub-No. 83), Green Field Transport Co., Inc., and MC 120181 (Sub-No. 7), Main Line Hauling Co., Inc., and MC 134286 (Sub-No. 29), Illini Express Inc., and MC 134477 (Sub-No. 189), Schanno Transportation, Inc., and MC 134755 (Sub-No. 113), Charter Express, Inc., and MC 139495 (Sub-No. 267), National Carriers, Inc., and MC 140033 (Sub-No. 31), Cox Refrigerated Express, Inc., and MC 143701, William Oberste, Inc., and MC 143702, All Freight Systems, Inc., is assigned for hearing May 22, 1978, at Kansas City, MO, and will be held at Room 609, Federal Office Building, 911 Walnut Street.

MC 135797 (Sub-No. 73), J. B. Hunt Transport, Inc., is assigned for hearing May 16, 1978, at Kansas City, MO, and will be held at Room 609, Federal Office Building, 911 Walnut Street.

AB 57 (Sub-No. 7), Soo Line Railroad Co., abandonment in Baraga and Houghton Counties, MI, is assigned for hearing May 8, 1978, at Houghton, MI, and will be held at city of Houghton City Council Chambers, 100 Portage Street.

MC 26825 (Sub-No. 16), Andrews Van Lines, Inc., now assigned April 12, 1978, at Omaha, NE, is cancelled and transferred to modify procedure.

MC-F-12234, Century Express Ltd.—Purchase—Lansdale Transportation Co., Inc., and MC-F-12684, Evans Delivery Co., Inc.—Control—Century Express Ltd., operator of Lansdale Transportation Co., Inc., now being assigned September 11, 1978, at the offices of the Interstate Commerce Commission, Washington, DC.

MC 1515 (Sub-No. 222), Greyhound Lines, Inc., now being assigned for continued hearings on April 17, 1978 (2 days), at Atlantic City, NJ, and will be held at the Howard Johnson's Motor Lodge, Pacific Avenue and Arkansas Avenue and April 19, 1978 (3 days), at Atlantic City, NJ (3 days), and will be held at the Sheraton Seaside Hotel, Pennsylvania Avenue and Boardwalk.

MC 82492 (Sub-No. 178), Michigan & Nebraska Transit Co., Inc., MC 107818 (Sub-No. 87), Greenstein Trucking Co., MC 107839 (Sub-No. 175), Denver-Albuquerque Motor Transport, Inc., MC 110563 (Sub-No. 214), Coldway Food Express, Inc., MC 111812 (Sub-No. 554), Midwest Coast Transport, Inc., MC 114273 (Sub-No. 326), CRST, Inc., MC 114569 (Sub-No. 206), Shaffer Trucking, Inc., MC 117815 (Sub-No. 272), Pulley Freight, Inc., MC 126844 (Sub-No. 41), R.D.S. Trucking Co., Inc., MC 133566 (Sub-No. 99), Gangloff & Downham Trucking Co., Inc., MC 133689, Overland Express, Inc., and MC 136385 (Sub-No. 8), Hallway, Inc., now being assigned May 11, 1978 (2 days), at Omaha, NE, in a hearing room to be later designated.

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

[FR Doc. 78-9143 Filed 4-5-78; 8:45 am]

[7035-01]

[Notice No. 628]

ASSIGNMENT OF HEARINGS

April 3, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

Correction

MC-F-13311, Whitfield Transportation, Inc.—Purchase—Idaho Falls Transfer & Storage Co., and MC 108461 Sub. 128, now assigned April 18, 1978 at Boise, ID, is canceled and reassigned for April 18, 1978 (4 days) at Dunfey Family's Royal Coach Inn, 2800 West Northwest Hwy at Love Field, Dallas, TX, and will continue April 24, 1978 (10 days) in Room 206, Bankruptcy Court, U.S. Post Office and Federal Building, North Eighth and Bannock Streets, Boise, ID.

This corrects location of Dallas, TX hearing room.

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

[FR Doc. 78-9144 Filed 4-5-78; 8:45 am]

[7035-01]

[Notice No. 20]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications including motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request

for oral hearing, must be filed with the Commission on or before May 8, 1978. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses from, but are deemed sufficient to place interested persons on notice of the proposed transfer

No. MC-FC-77580, filed March 17, 1978. Transferee: DOUGLAS H. WEST, P.O. Box 1274, Salisbury, MD 21801. Transferor: John A. Bagwell, d.b.a. Bagwell Trucking, Stage Road, Delmar, MD 19940. Applicants' representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 125833 (Sub-No. 1), issued January 21, 1974, as follows: *Lumber*, from Hebron and Salisbury, MD, to Trenton and Burlington, NJ, points in DE, MD, and those in a described area of PA, *lumber and forest products*, from points in Wicomico and Somerset Counties, MD, and Sussex County DE, to points in PA east of the Susquehanna River and on and south of U.S. Hwy 22, those in that part of NJ on and south of U.S. Hwy 22, and those in the New York, NY, commercial zone (except those on and south of U.S. Hwy 22), from points in Sussex County, DE, to Baltimore, MD, *fruit and vegetable containers*, from Hebron and Salisbury, MD, to Bridgeton, Rosenhayn, and Landisville, NJ, New York, NY, to points in Accomac and Northampton Counties, VA, and those in DE, and MD, *building materials*, from Philadelphia, PA, and Wilmington, DE, to Hebron, Salisbury, and Fruitland, MD, *agricultural commodities*, from points in Wicomico County, MD, within 15 miles of Hebron, MD, to Philadelphia, Pittsburgh, Scranton, and Wilkes-Barre, PA, to New York, NY, *wooden pallets*, from points in Kent County, DE, to Baltimore MD, Philadelphia, PA, New York, NY, points in NJ, and points in Naussau County, NY. Transferee is presently authorized to operate as a *common carrier*, under Certificate No. MC 138395 and Subs thereto. Application has not been filed for temporary authority under section 210a(b).

No. MC-FC-77583, filed March 17, 1978. Transferee: LONIA JERRY CATON, doing business as CATON VAN & STORAGE, 1930 West Winton Avenue No. 10, Hayward, CA 94545. Transferor: David Tell, doing business as C. A. Buck Moving & Storage Co., 391 Foster City Boulevard, San Mateo, CA 94402. Applicants' representative: Lonia Jerry Caton (same address as transferee). Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 123160, issued November 8, 1974, as follows: *Household goods*, as defined by the Commission, between points in Contra Costa, San Francisco, Alameda, San Mateo, and Santa Clara Counties, CA. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

No. MC-FC-77587, filed March 19, 1978. Transferee: ROSEVILLE MOTOR EXPRESS, INC., 227 Cemetary Street, Crooksville, OH 43731. Transferor: R. R. Pemberton and D. J. Pemberton, a partnership, doing business as Roseville Motor Express & Crooksville Transfer, 254 Zanesville Road, Roseville, OH 43777. Applicants' representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 69877, issued June 14, 1973, as follows: *General commodities*, subject to certain exceptions, serving Heath, OH, as an off-route point in connection with carrier's regular route operations between Zanesville, OH and Mc-Luney, OH, restricted to the interchange of traffic at the terminal of Suburban Motor Freight, Inc., at Heath, OH, over a specified regular route between Zanesville, OH, and Mc Luney, OH, serving all intermediate points, and the off-route point of Rose Farm, OH. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

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

[FR Doc. 78-9142 Filed 4-5-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Equal Employment Opportunity Commission	1
Federal Deposit Insurance Corporation	2
Federal Energy Regulatory Commission	3
Federal Home Loan Bank Board	4
Nuclear Regulatory Commission	5
Postal Rate Commission	6
Securities and Exchange Commission	7
United States Railway Association	8

[6570-06]

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-691-78.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, April 4, 1978.

CHANGES IN THE MEETING:

The following items are added to the portion open to the public:

1. Delay of phase-in of field offices from third to fourth quarter, and establishment of jurisdictional boundaries for field offices.
2. Proposed statement on hazardous substances and equal employment opportunity.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required these changes and that no earlier announcement was possible.

The vote was as follows:

In favor of change: Eleanor Holmes Norton, Chair; Daniel E. Leach, Vice Chair; and Ethel Bent Walsh, Commissioner.
Opposed: None.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued April 3, 1978.

[S-722-78 Filed 4-4-78; 10:41 am]

[6714-01]

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:50 p.m. (Atlantic Time) on Friday, March 31, 1978, the Board of Directors of the Federal Deposit Insurance Corporation met in the Office of the Secretary of the Treasury for the Commonwealth of Puerto Rico, San Juan, Puerto Rico, to (1) accept sealed bids for the purchase of certain assets of and the assumption of the deposit liabilities of Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico, which was closed by the Secretary of the Treasury of the Commonwealth on March 31, 1978; (2) approve resulting applications from Banco Popular de Puerto Rico, San Juan (P.O. Hato Rey), Puerto Rico, and Banco de Santander-Puerto Rico, San Juan (P.O. Hato Rey), Puerto Rico, for consent to purchase certain assets of and assume the deposit liabilities of the closed bank; (3) provide such financial assistance, pursuant to section 13(e) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)), as was necessary to effect the purchase and assumption transaction; and (4) approve a personnel action occasioned by the appointment and taking office of a new member of the Board of Directors.

In calling the meeting, the Board of Directors determined, on motion of Chairman George A LeMaistre, seconded by Director William M. Isaac, and concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the meeting was exempt from the open meeting requirements of the "Government in the Sunshine Act" by subsections (c)(6), (c)(8), and (c)(9)(A)(ii) thereof (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: April 3, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-725-78 Filed 4-4-78; 2:53 pm]

[6740-02]

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 3791, March 31, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., April 5, 1978.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

ER-5.—E-8494, Minnesota Power & Light Co.

KENNETH F. PLUMB,
Secretary.

[S-721-78 Filed 4-4-78; 9:10 am]

[6720-01]

4

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., April 10, 1978.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Robert Marshall, 202-377-6679.

MATTERS TO BE CONSIDERED:

Satellite office applications for concurrent consideration—(1) Biscayne Federal Savings & Loan Association, Miami, Fla.; and (2) Union Federal Savings & Loan Association of Miami.
Branch office application—Valley Federal Savings & Loan Association, Van Nuys, Calif.
Branch office applications for concurrent consideration—(1) Western Federal Savings & Loan Association, Los Angeles, Calif.; and (2) Beverly Hills Federal Savings & Loan Association, Beverly Hills, Calif.
Consideration of request made by TransOhio Financial Corp.—Request that the Board open the record for further submissions—TransOhio Financial Corp., Cleveland, Ohio and Buckeye Federal Savings & Loan Association, Columbus, Ohio.
Branch office application—Peoples Federal Savings & Loan Association, Massillon, Ohio.
Consideration of Association request for extension of time—Sentinel Savings & Loan Association, Richlands, Va.
Consideration of Association request for remission of liquidity deficiency penalty—

Humbolt Federal Savings & Loan Association, Eureka, Calif.
Consideration of termination of insurance of accounts and withdrawal from bank membership—The Clermont Building, Loan & Savings Co., New Richmond, Ohio.
Application for permission to organize a new Federal Savings & Loan Association—W. J. Jones, et al., Dallas, Tex.
Loan agency office application—Home Federal Savings & Loan Association of San Diego, San Diego, Calif.
Limited facility application—Coral Gables Federal Savings & Loan Association, Coral Gables, Fla.
Consideration of request by H. N. and Frances C. Berger Foundation, Arcadia, Calif., for modification of Board resolution.
Branch office application—Century Federal Savings & Loan Association of Ormond Beach, Ormond Beach, Fla.
Application for change of office location—Home F. S. & L. A. of San Diego, San Diego, Calif.
Consideration of Association request for modification of condition—Equitable Savings & Loan Association, Portland, Oreg.
Service Corporation activity application (Trustee under Deeds of Trust)—Pioneer Federal Savings & Loan Association, Campbell, Calif.
Branch office application—Phenix Federal Savings & Loan Association—Phenix City, Ala.
Application for relocation of branch office—Union Federal Savings & Loan Association of Cook County, Matteson, Ill.
Application for permission to change office location—Florida Federal Savings & Loan Association, St. Petersburg, Fla.
Branch office application—First Federal Savings & Loan Association of Beaumont, Beaumont, Jefferson County, Tex.
Branch office application—California Federal Savings & Loan Association, Los Angeles, Calif.
Application for Bank membership—Mid Maine Mutual Savings Bank, Auburn, Maine.
Office building investment application—Southwestern Federal Savings & Loan Association, Chickasha, Okla.
Branch office application—Home Federal Savings & Loan Association of Upper East Tennessee—Johnson City, Tenn.
Consideration of proposed regulations concerning nondiscrimination in federally assisted programs.
Applications for Bank membership and insurance of accounts—International Savings & Loan Association, San Francisco, Calif.
Consideration of proposed amendments regarding maturities of certificate accounts.

[S-720-78 Filed 4-4-78; 9:10 am]

[7590-01]

5

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of April 3, 1978.

PLACE: Commissioners' Conference Room, 1717 H St. NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Friday, April 7, 2 p.m., Discussion of NRDC Request for Hearing in Tarapur Export License (Approximate 2 hours—Public meeting—Postponed from 4-4-78).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

[S-730-78 Filed 4-5-78; 9:58 am]

[7715-01]

6

POSTAL RATE COMMISSION.

TIME AND DATE: Each business day from April 10 through May 9, 1978, at 9 a.m. and 2 p.m.

PLACE: Commission Conference Room, Room 500, 2000 L Street NW., Washington, D.C. 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. R77-1. Meetings closed pursuant to 5 U.S.C. § 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION:

Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268, telephone 202-254-5614.

[S-723-78 Filed 4-4-78; 10:41 pm]

[8010-01]

7

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of April 10, 1978, in Room 825, 500 North capitol Street, Washington, D.C.

An open meeting will be held on Monday, April 10, 1978, at 9 a.m. A closed meeting will be held on Monday, April 10, 1978, immediately following the open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(8)(9)(i) and (10).

Chairman Williams, Commissioners Loomis, Evans, Pollack and Karmel determined to hold the aforesaid meeting in closed session.

The subject matter of the open meeting scheduled for April 10, 1978, at 9 a.m., will be:

1. Proposed interpretative release dealing with the exemptive provisions of Section 3(a)(8) of the Securities Act of 1933. This concerns certain contracts issued by insurance companies known as guaranteed investment contracts, tax-deferred annuity contracts and similar products.
2. Proposed notice concerning an application filed by Standard Shares, Inc., for an order stating that, the company has ceased to be an investment company and for an order terminating its registration.
3. Proposed adoption of amendments to Form S-16 under the Securities Act of 1933, which would expand the availability of this short form for the registration of securities.
4. Request filed by the Spokane Stock Exchange, Inc., for an exemption from certain reporting requirements concerning eligible securities under Rule 17a-15 of the Securities Exchange Act of 1934.
5. Withdrawal of proposed Rule 17a-14, Reporting of Quotations in Listed Securities under the Securities Exchange Act of 1934, because it has been superceded by Rule 11Ac-1, Dissemination of Quotations for Reported Securities, which becomes effective on May 1, 1978.

The subject matter of the closed meeting scheduled for April 10, 1978, immediately following the open meeting, will be:

Formal orders of investigation.
Referral of investigatory files to Federal, State, or Self-Regulatory authorities.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Freedom of Information Act appeals.
Regulatory matter bearing envorcement implications.
Subpoena enforcement action.
Other litigation matters.

FOR FURTHER INFORMATION CONTACT:

Julian Pierce at 202-376-7155 or Richard Humes at 202-376-8025.

APRIL 3, 1978.

[S-724-78 Filed 4-4-78; 2:53 pm]

[8240-01]

8

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: April 6, 1978, 2 p.m.

PLACE: Board Room, Room 2200, Trans Point Building, 2100 Second Street SW., Washington, D.C.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED BY THE EXCUTIVE COMMITTEE:

1. Consideration of additional advances to the Delaware & Hudson Railway Co.

CONTACT PERSON FOR MORE INFORMATION:

Alex Bilanow 202-426-4250.

[S-726-78 Filed 4-4-78; 2:53 pm]

federal register

THURSDAY, APRIL 6, 1978
PART II



ENVIRONMENTAL PROTECTION AGENCY

■

REGULATORY AGENDA

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 874-1]

REGULATORY AGENDA

The Environmental Protection Agency encourages public participation in developing environmental regulations.

EPA writes and adopts regulations in the areas of air and water pollution control, drinking water protection, noise reduction, radiation protection, solid waste management, and control of toxic substances and pesticides. These regulations include general rules for the implementation and enforcement of major programs as well as specific emission limitations for individual industrial categories.

Regulations go through a number of internal and public reviews before the EPA Administrator approves their adoption. In addition to the formal opportunities for comment provided when regulations are proposed in the FEDERAL REGISTER and when public hearings are scheduled, EPA encourages interested parties to contact EPA staff directly. This participation in the rulemaking process can include providing comments on a particular regulation, obtaining answers to questions, reviewing draft documents, and attending informal meetings.

This Agenda contains two lists. The first names regulations which we are writing now but have not yet published as a proposal in the FEDERAL REGISTER. The list provides a brief description of each regulation, the current scheduled proposal date, and a person to contact for further information. We have tried to list all major regulations now under development but a few may have been inadvertently omitted. There is no legal significance to an item not appearing on this list. The second list includes regulations which have already been proposed in the FEDERAL REGISTER and on which we are still soliciting comments. Directions for submitting these comments are also provided.

Additional information concerning EPA's regulation development procedures may be obtained from: Philip Schwartz, Chief, Standards and Regulations Coordination Branch, Environmental Protection Agency, Washington, D.C. 20460, 202-755-2693.

From May 1 through May 31, 1978, callers from the 48 contiguous States outside of the metropolitan Washington, D.C., area can obtain updated status information on the regulations that EPA is developing by calling toll-free 800-424-9064 between the hours of 9 a.m. and 4:30 p.m. e.d.t. If the public finds this service useful, it will be extended. If you want other information on one of the specific regulations in the Agenda, please contact the individual listed for that regulation.

This Agenda will be updated in 6 months in accordance with the President's Executive order, improving government regulations, signed March 23 (Executive Order 12044, FEDERAL REGISTER, March 24, pages 12661-12665).

Dated: March 29, 1978.

HENRY E. BEAL,
Director, Standards and Regulations Evaluation Division.

MAJOR EPA REGULATIONS UNDER CONSIDERATION

Name	Description	Expected proposal date	Contact person and address
THE CLEAN AIR ACT (CAA)			
Regional consistency, sec. 101	The CAA requires EPA's regional offices to implement the Clean Air Act in a consistent manner. This regulation will tell them how.	June 1978	Paul DeFalco, Jr., Environmental Protection Agency, San Francisco, Calif. 94111, 415-556-2320, FTS 8-556-2320.
Regulations providing for State/local consultation, sec. 119.	The regulations will ask the States to provide a satisfactory process of consultation with local governments, elected officials, and Federal land managers. The regulations will also require the States to choose a lead planning organization to coordinate the State implementation plan revisions for oxidants (smog) and carbon monoxide..	April 1978	John Hidinger (AW-445), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0480.
Noncompliance penalties, sec. 120	The CAA requires EPA to establish a penalty program to start collecting money from polluters after mid-1978 in an amount equal to the money the polluter saves by failing to obey the law.	July 1979	Dianne Smith (EN-341), Environmental Protection Agency, Washington, D.C. 20460, 202-755-2850.
Tall stack, sec. 121	The regulations will explain the degree to which taller smoke stacks can be used instead of pollution control equipment.	April 1978	David Dunbar (MD-15), Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5251, FTS 8-629-5497.
Prevention of significant deterioration (PSD), sec. 166.	These regulations require EPA to promulgate PSD requirements for pollutants other than particulate matter and sulfur dioxide.	December 1978	Do.
Visibility protection, sec. 167(A)	The CAA requires EPA to prepare a report to Congress and guidelines which require State implementation plans to address visibility problems.	April 1979	Joe Padgett (MD-12), Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5204, FTS 8-629-5204.
Monitoring regulations, secs. 309/319	These regulations would revise existing State and local air pollution monitoring networks. They also would require EPA to establish an air quality monitoring system throughout the United States with standardized monitoring methods and good quality control.	May 1978	Robert Neligan (MD-14), Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5447, FTS 8-629-5447.

EPA is now revising the criteria documents for the following six criteria pollutants under section 108 of the Clean Air Act. Criteria pollutants are those substances in the air which are reasonably anticipated to endanger public health or welfare and which are released to the air by numerous or diverse sources. A criteria document includes the latest scientific knowledge on the kind and extent of public health and welfare problems caused by the presence of a criteria pollutant in the air. After the revision of the criteria document, it may be necessary to change ambient air quality standards for these pollutants.

Name	Description	Expected proposal date	Contact person and address
Carbon monoxide		December 1979	Joe Padgett (MD-12), Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5204, FTS 8-629-5204.
Sulfur oxides		December 1980	Do.
Particulates		....do	Do.
Nitrogen oxides (short-term)		June 1978	Do.
Nitrogen oxides (annual)		June 1979	Do.
Photochemical oxidants		April 1978	Do.

The administrator is now considering listing, other actions as described, the following source categories under section 111 to control air pollution from new and modified facilities.

Name	Description	Expected proposal date	Contact person and address
List of new source performance standards (NSPS)	The 1977 Clean Air Act Amendments require the Administrator to list the categories of major stationary sources that are not already subject to new source performance standards. He must then promulgate standards for these categories within 4 yr.	May 1978	Don Goodwin (MD-13), Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5271, FTS 8-629-5271.
NSPS—aluminum plant fluoride control-existing plants.	These would be guidelines for State control of fluoride emissions from existing aluminum plants.	September 1978.	Do.
NSPS—fossil fuel steam generators (revision)	The NSPS would be updated to reflect advances in the state of air pollution control technology for sulfur dioxide, nitrogen dioxide, and particulate emissions.	April 1978	Do.
NSPS—glass manufacturing	Particulate emissions from new glass manufacturing furnaces would be regulated. The Governor of New Jersey requested that EPA develop national standards.	August 1978	Do.
NSPS—internal combustion engines	These regulations would require the application of best demonstrated control technology to control emissions from stationary internal combustion engines.	September 1978.	Do.
NSPS—nonmetallic minerals	Particulate emissions from quarrying operations and related facilities would be controlled.	....do	Do.
NSPS—organic solvent metal cleaning	This rule would control evaporative emissions from metal cleaning and degreasing operations.	November 1978	Do.
NSPS—petroleum liquid storage vessels	This would be a revision of 1974 NSPS. The revised standard would propose the use of double seals rather than single seals on floating roofs. The standard, as currently being developed, would essentially eliminate 1 or 2 types of seals currently in use.	May 1978	Do.
NSPS—sulfur recovery in natural gas fields	This regulation would control emissions of total reduced sulfur compounds.	November 1978	Do.
NSPS—metal furniture surface coating	This regulation would control organic emissions from furniture surface coating operations.	December 1978	Do.
NSPS—surfacing coating operations for auto assembly plants.	Evaporative emissions from coating operations in the auto and light truck industry would be controlled.	....do	Do.
NSPS—synthetic organic chemical manufacturing	Selection of a degree of control of emissions from manufacture of over 100 major organic chemicals would be made. A series of standards would be proposed.	December 1979	Do.

The Administrator has designated or is considering designating the following pollutants and sources as hazardous under section 112 of the Clean Air Act.

Name	Description	Expected proposal date	Contact person and date
Arsenic	A health risk assessment is being conducted. If it is determined that arsenic emissions (primarily from copper smelters) are a hazardous air pollutant, then emission standards would be proposed.	September 1978.	Don Goodwin, Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5271, FTS 8-629-5271.
Asbestos released from crushed stone	Use of crushed serpentine rock for roadway surfacing may release significant qualities of asbestos. A monitoring program is underway and results indicate standards will be proposed.	January 1979	Do.
Benzene	Benzene has been implicated as a cause of leukemia and was listed as a hazardous air pollutant in June 1977. Standards to control benzene emissions at a safe level (with an ample margin of safety) would be proposed. A number of regulations are under development.	September 1978.	Do.

Name	Description	Expected proposal date	Contact person and address
Coke oven emission-charging and topside leaks.....	A health risk assessment is being conducted. It if is determined that coke oven emissions are a hazardous air pollutant, then emission standards would be proposed.	.....do.....	Do.

The following regulations to control emissions from mobile sources of air pollution are now under development.

Name	Description	Expected proposal date	Contact person and address
Requirements to build demonstration cars meeting 0.4 g/mi NOx standard, sec. 202.	All manufactures with at least a 0.5 percent share of the U.S. passenger car market will have to build research vehicles which meet the 0.4 g nitrogen dioxide per mile research objective.	April 1978.....	Paula Machlin (AW-455), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0596.
Importation of motor vehicles and motor vehicle engines, sec. 203.	This regulation would attempt to improve the effectiveness and administration of EPA's program to prevent importation of vehicles and engines which fail to conform to Federal emission standards.	.....do.....	Ben Jackson (EN-340), Environmental Protection Agency, Washington, D.C. 20460. 202-755-0295.
Selective enforcement auditing of heavy-duty engines and vehicles, sec. 206(b).	This regulation would establish a program for testing heavy duty engines and vehicles at the assembly line to assure compliance with emission standards.	May 1978.....	Chuck Freed (EN-338), Environmental Protection Agency, Washington, D.C. 20460, 202-755-2870.
Selective enforcement auditing of motorcycles, sec. 206(b).	This regulation would establish a program for testing motorcycles at the assembly line to assure compliance with emission standards.	.....do.....	Do.
Penalties for noncomplying heavy-duty engines and vehicles, sec. 206(g).	This regulation would allow heavy-duty engine or vehicle manufacturers to sell vehicles or engines exceeding the standards if they pay a noncompliance penalty. They still could not be sold, however, if they exceed an upper limit.	.....do.....	Frank Slaveter (EN-338), Environmental Protection Agency, Washington, D.C. 20460, 202-755-1572.
Emission control warranty, sec. 207(a)(1).....	This regulation would activate a manufacturer's warranty that becomes enforceable if the vehicle exceeds emission standards as a result of defects present at the time of sale.	.....do.....	Mike Scibinico (EN-340), Environmental Protection Agency, Washingon, D.C. 20460, 202-755-0297.
Aftermarket parts certification, sec. 207(a)(2).....	This regulation would establish guidelines so aftermarket parts manufacturers can certify that their parts do not degrade emissions.	August 1978.....	Do.
Emission control (performance) warranty, sec. 207(b)(2).	This regulation would specify performance warranty requirements based on short-cycled emissions test for in-use vehicles. A regulation was proposed in May 1977 and it will be reproposed to take the Clean Air Act amendments into account.	May 1978.....	Do.

Name	Description	Expected proposal date	Contact person and address
Fill pipe standards, sec. 215.....	At such time as phase II vapor recovery regulations are promulgated, EPA is required to set standards for vehicle refueling orifices and associated parts of the fuel system to provide effective connection between fill pipe and vapor recovery refueling nozzles. The effective model year is to be determined on the basis of leadtime required for design and production of the required systems.	September 1979.	Ernie Rosenberg (AW-455), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0596.
Test procedures for measuring heavy-duty evaporative emissions, sec. 202(b).	The CAA requires that a test procedure be promulgated which will require measurement of evaporative emissions from the vehicles as a whole. EPA will promulgate SHED procedures and standards.	May 1978.....	Bob Smith (AW-455), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0596.
Emission standard for heavy-duty vehicles over 8,500 lb, sec. 202(a)(3).	The CAA requires EPA to establish emission standards for heavy-duty vehicles (8,000 lb). Standards for hydrocarbons and carbon monoxide are a 90 pct reduction from baseline emissions for 1983 model year and 75 pct reduction for nitrogen dioxide beginning with 1985 model year. EPA is in the process of developing a new test procedure for measuring exhaust emissions and must then measure baseline emissions.	December 1979	Do.
THE FEDERAL WATER POLLUTION CONTROL ACT (FWPCA)			
State management assistance, Secs. 101(b)/205.....	EPA may reserve 2 pct or $400,000, whichever is greater, of each State's allotment for grants for State management of the construction grant program. If all 2 pct is not used for construction grant management, the balance will be available for administering secs. 402, 404, and 208 and for managing grants for small communities.	May 1978.....	Albert Pelmoter (WH-547), Environmental Protection Agency, Washington, D.C. 20460, 202-426-8902.

Name	Description	Expected proposal date	Contact person and address
Innovative technology, secs. 201(g)(5), 304(d)(3)	After Sept. 30, 1978, grants for wastewater treatment works will only be awarded if the grant applicant has considered using innovative alternative wastewater treatment technologies such as recycling and land treatment. EPA will publish guidelines on how to identify and evaluate innovative and alternative wastewater treatment methods after consulting with Federal and State agencies and other interested persons.	do	Tom O'Farrell (WH-547), Environmental Protection Agency, Washington, D.C. 20460, 202-426-8976.
Individual systems, sec. 201(h)	Regulations will be issued on the awarding of grants to privately owned treatment works serving existing residences or small commercial establishments where public ownership is not feasible.	do	Keith Dearth (WH-547), Environmental Protection Agency, Washington, D.C. 20460, 202-426-9404.
State determinations of priorities for construction of wastewater treatment systems, secs. 201 (g)(5), (6), (h), (i), (j), 203, 204, 205 (h)(2), 216.	New regulations would describe the methodology for and the use of State priority lists for construction of wastewater treatment systems.	do	Joe Easley (WH-547), Environmental Protection Agency, Washington, D.C. 20460, 202-426-4445.
Administrative, legal, and other technical clarifications to construction grant regulations, secs. 201-205/207, 210-212/501/502, 511.	EPA is reviewing all construction grant regulations under 40 CFR 35 subpt. E to make technical and administrative changes based on operating experience with the existing regulations.	July 1978	Do.
Local assistance, sec. 203(a)	Construction grants for wastewater treatment systems are awarded in 3 stages. Regulations are being developed that would simplify the process for projects costing less than $2,000,000 and serving less than 25,000 people by combining the last 2 steps.	May 1978	Do.
User charges, sec. 204(b) (1), (5)	Each recipient of waste treatment service must pay his proportional share of the cost of operation and maintenance (including replacement) of that waste treatment system. The revision would provide for use of ad valorem taxes to collect user charges from residential and small nonresidential users.	do	John Pai (WH-547), Environmental Protection Agency, Washington, D.C. 20460, 202-426-8945.
Industrial cost recovery (ICR), secs. 204 (b)(3), (b)(6).	Any industrial user of the publicly owned treatment works (POTW) must pay back that portion of the cost of construction of such POTW which is allocable to the treatment of such industrial wastes to the extent attributable to the Federal share of the cost of construction. The revision would establish an 18-mo moratorium on ICR payments to the Federal Government.	do	Do.
Water quality management, sec. 208(b)(4)	Regulations would be developed for programs to abate pollution and improve water quality to meet the 1977 Clean Water Act Amendments goals.	do	Joe Krivak (WH-554), Environmental Protection Agency, Washington, D.C. 20460, 202-755-4911.
Cost effectiveness guidelines, sec. 217	The proposed revision (amendment of the existing cost effectiveness analysis guidelines published as app. A to the construction grant regulations) is intended to provide for cost-effective sizes of and sufficient reserve capacity for wastewater treatment works, and, at the same time, to avoid overdesign.	do	Myron Tiemens (WH-547), Environmental Protection Agency, Washington, D.C. 20460, 202-755-8056.
Ocean outfalls, sec. 301	POTW dischargers into certain marine waters may be eligible for a modification to secondary treatment requirements.	April 1978	Ed Kramer (EN-336), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0750.
Extension of pollution control deadlines for publicly owned treatment works (POTW's), sec. 301(i)(1).	This regulation would explain the criteria for extending the July 1, 1977, deadline for the use of secondary treatment by POTW's.	do	Shanna Halpern (EN-336), Environmental Protection Agency, Washington, D.C. 20460, 202-472-3665.
Revision of water quality standards regulattion, sec. 303.	This regulation would require States to adopt water quality criteria for substances which the Administrator has determined have a significant adverse effect on human health and upon aquatic life.	July 1978	Ken Mackenthun (WH-585), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0100.
Quality criteria for water: Vol. II, sec. 304(a)	Ambient water quality criteria will be established for 65 pollutants.	June 1978	Leonard Guarraia (WH-585), Environmental Protection Agency, Washington, D.C. 20460, 202-245-3042.
Pretreatment removal credit, sec. 307(b)(1)	These are the revised general pretreatment regulations (40 CFR 403) which would set out mechanisms by which owners or operators of publicly owned treatment works may modify Federal pretreatment standards as applied to industries discharging to their systems.	April 1978	Steve Heare (WH-586), Environmental Protection Agency, Washington, D.C. 20460, 202-755-6885.
Oil removal, sec. 311	Dischargers of oil are liable for cleanup. These rules would establish procedures which must be followed to insure effective removal.	May 1978	Hans Crump (WH-548), Environmental Protection Agency, Washington, D.C. 20460, 202-245-3045.
Drinking water intake zone exemptions, sec. 312	These regulations would establish guidance for State no-discharge prohibitions for drinking water intake zones.	July 1979	Jonathan Amson (WH-585), Environmental Protection Agency, Washington, D.C. 20460, 202-245-3036.
Secondary treatment standards for commercial vessels on the Great Lakes, sec. 314.	This regulation would require a minimum of secondary treatment for sewage discharges for commercial vessels on the Great Lakes.	April 1979	Do.

Name	Description	Expected proposal date	Contact person and address
NPDES regulations—program definition, procedure, State programs and criteria, sec. 402.	Existing NPDES regulations are undergoing a comprehensive revision to reflect new requirements of the Clean Water Act, to delete or revise outdated elements, and to generally clarify and update the NPDES procedures.	May 1978	Ed Kramer (EN-336), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0750.
Ocean discharge criteria, sec. 403(c)	These guidelines pertain to discharges through pipes to the ocean. They are based on prevention of environmental degradation of the waters of the territorial seas, the contiguous zone, and the oceans. Both industrial and municipal dischargers would have to meet these criteria.	April 1978	Tom O'Farrell (WH-546), Environmental Protection Agency, Washington, D.C. 20460, 202-426-8976.
Technical requirements for approval of State dredge or fill disposal programs, secs. 404 (a-f), (k), (l), (m).	These regulations would specify requirements for designation of disposal sites and alternative testing for bioassays and bulk sediments analyses; and criteria for making decisions with respect to vetoing of disposal sites.	May 1978	Joe Lewis (WH-595), Environmental Protection Agency, Washington, D.C. 20460, 202-245-0581.

Proposed effluent guidelines are now being revised for review of best available technology, new source performance standards, and pretreatment guidelines in the following source categories under sections 301, 304, and 306 of the Federal Water Pollution Control Act.

Name	Description	Expected proposal date	Contact person and address
Iron and steel manufacturing		June 1978	Ernst Hall (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2576.
Petroleum refining		do	Robert Dellinger (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2497.
Timber products processing		September 1978.	John Riley (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-5554.
Steam electric powerplants		do	John Lum (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2583.
Leather tanning and finishing			William Sonnett (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2707.
Nonferrous metals manufacturing		December 1978	Patricia Williams (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2586.
Paving and roofing		do	Anthony Montrone (WH-586), Environmental Protection Agency, Washington, D.C. 20460, 202-755-6905.
Paint and ink formulation		do	David Alexander (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2555.
Printing and publishing services		do	Do.
Ore mining and dressing		do	Gail Coad (WH-586), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2503.
Coal mining		do	William Telliard (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2726.
Organic chemicals manufacturing		March 1979	Lemar Miller (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2497.
Inorganic chemicals		do	Walter Hunt (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2724.
Textiles		do	James Gallup (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2554.
Plastics and synthetic material		do	Paul Fahrenthold (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2497.
Pulp and paper		do	Craig Vogt (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2555.
Rubber processing		do	Juanita Hillman (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2497.
Soap and detergents manufacturing		June 1979	Sammy Ng (WH-586), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2503.
Auto and other laundries		do	Richard Kinch (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2571.
Miscellaneous chemicals—adhesives and sealants		do	Elwood Forsht (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2707.

Name	Description	Expected proposal date	Contact person and address
Miscellaneous chemicals—explosives manufacturing.		....do....	Walter Hunt (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2724.
Miscellaneous chemicals—gum wood		....do....	Richard Williams (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2555.
Miscellaneous chemicals—pesticides		....do....	George Jett (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2497.
Miscellaneous chemicals—pharmaceuticals		....do....	Joe Vitalis (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2497.
Miscellaneous chemicals—carbon black		....do....	Chester Rhines (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2582.
Electroplating		....do....	Charles Cook (WH-586), Environmental Protection Agency, Washington, D.C. 20460, 202-426-7874.
Machinery and mechanical products—photographic equipment and supplies.		....do....	Ernst Hall (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2576.
Machinery and mechanical products—mechanical products.		....do....	Walter Hunt (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2724.
Machinery and mechanical products—electrical and electronic components.		....do....	Do.
Machinery and mechanical products—foundry operations.		....do....	Ernst Hall (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2576.
Machinery and mechanical products—copper and copper alloy products.		....do....	Do.
Machinery and mechanical products—battery manufacturing.		....do....	Do.
Machinery and mechanical products—coil coating ..		....do....	Do.
Machinery and mechanical products—plastics processing.		....do....	Do.
Machinery and mechanical products—porcelain enameling.		....do....	Do.
Machinery and mechanical products—aluminum forming.		....do....	Do.
Machinery and mechanical products—shipbuilding.		....do....	Do.
THE SAFE DRINKING WATER ACT (SDWA)			
Underground injection control—grants, sec. 1412(a).	This regulation would set forth the requirements for underground injection control grants.	May 1978	Tom Belk (WH-550), Environmental Protection Agency, Washington, D.C. 20460, 202-426-3934.
Underground injection control program, sec. 1413(b).	This regulation would provide minimum requirements for State programs to control groundwater contaminants from underground injection. An underground injection control program regulation was proposed in August 1976. It has been decided to substantially revise that proposal so EPA will repropose the regulation and hold a second public comment period.	....do....	Do.

EPA will propose emission standards for the following products under sections 5 and 6 of the Noise Control Act.

Name	Description	Expected proposal date	Contact person and address
THE NOISE CONTROL ACT (NCA)			
Lawnmowers	This regulation will set noise emission standards for new lawnmowers.	June 1978	Henry Thomas (AW-471), Environmental Protection Agency, Washington, D.C. 20460, 703-557-7743.
Pavement breakers and rock drills	This regulation will set noise emission standards for new pavement breakers and rock drills.	July 1978	Kenneth Feith (AW-471), Environmental Protection Agency, Washington, D.C. 20460, 703-557-2710.
Truck transportation refrigeration units	This regulation will set noise emission standards for new truck transport refrigeration units.	March 1978	Do.

EPA is also preparing the following regulation for proposal under section 9 the Noise Control Act.

Name	Description	Expected proposal date	Contact person and address
Importation of noise emitting vehicles	These will be concurrent customs department/EPA regulations governing the importation of regulated products.	April 1978.....	Rich Kozlowski (EN-387), Environmental Protection Agency, Washington, D.C. 20460, 703-557-7470.

Name	Description	Expected proposal date	Contact person and address
THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)			
Procedures for reclassification of permissible uses and for cancellation, denial, and suspension of registration, secs. 3, 6, 9, 21, 25.	This regulation would be a comprehensive revision of procedures for reclassifying uses of pesticides, and for canceling, denying, or suspending the registration of a pesticide in order to make the procedures more orderly, efficient, and open.	June 1978	David Menotti (A-132), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0763.
Exemption of new drugs for human use, sec. 25(c)(2).	This regulation will exempt (from FIFRA) pesticides that are also new drugs for human use regulated by the Food and Drug Administration.	April 1978	Dave Brandwein (WH-566), Environmental Protection Agency, Washington, D.C. 20460, 202-755-8037.

EPA will repropose Pesticide Registration Guidelines under section 3 of FIFRA which detail the information needed in the following areas for the registration process.

Name	Description	Expected proposal date	Contact person and address
Chemistry		April 1978	Bill Preston (WH-568), Environmental Protection Agency, Washington, D.C. 20460, 202-557-7351.
Hazard evaluation: Wildlife and aquatic organisms		do	Do.
Hazard evaluation: Human and domestic animals		June 1978	Do.
Label development		March 1979	Do.
Product performance		December 1978	Do.

EPA is preparing the following for proposal under section 274(h) of the Atomic Energy Act.

Name	Description	Expected proposal date	Contact person and address
THE ATOMIC ENERGY ACT (AEA)			
Environmental standards for high-level radioactive waste.	The regulation would set standards for release of radioactivity to the environment as a result of storage of waste isotopes.	September 1978.	Richard Guimond (AW-460), Environmental Protection Agency, Washington, D.C. 20460 703-557-8927.
Florida phosphate tailings	A 1975 commitment to the Governor of Florida by the Administrator of EPA said that EPA would establish guidelines on what to do about houses built near phosphate tailings that contain uranium.	April 1978	Do.
Guidance for occupational radiation exposure	This guidance would update existing (1960) radiation occupational exposure limits for workers at Federal facilities and those facilities licensed by Federal agencies, e.g., nuclear powerplants.	November 1978	Luis Garcia (AW-460), Environmental Protection Agency, Washington, D.C. 20460, 703-557-8224.
Protective action guidelines for nuclear emergencies.	This would provide guidance for emergency response plans in the event of a nuclear accident, i.e., effluent release from a nuclear reactor.	do	Jim Hardin (AW-460), Environmental Protection Agency, Washington, D.C. 20460, 703-557-8610
THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)			
Guidelines for solid waste management land spreading practices, sec. 1008(a).	These would be nonregulatory technical guidelines on landspreading practices for the beneficial use of solid waste as soil conditioner and plant nutrient.	May 1978	Bruce Weddle (WH-564), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9120.
Hazardous waste criteria—identification and listing, sec. 3001.	These criteria identify and list those wastes that will be controlled under the nationwide hazardous wastes management program.	do	Alan Corson (WH-565), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9187.
Standards for generators of hazardous wastes, sec. 3002.	This regulation would establish national standards for generators of hazardous wastes, covering such items as recordkeeping, containerization and labeling, waste identification, and reporting. This regulation would also contain provisions for a hazardous waste manifest system.	April 1978	Harry Trask (WH-565), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9187.
Standards of transporters of hazardous wastes, sec. 3003.	These national standards would make transporters of hazardous wastes responsible for shipping only properly labeled containers and only to permitted facilities.	do	Do.
Standards for hazardous waste treatment, storage, and disposal facilities, sec. 3004.	These standards would establish technical performance standards for hazardous waste management facilities relative to operating practices, location, and design. They would contain provisions for protection of surface-water, groundwater, and air quality.	June 1978	John Schaum (WH-565), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9200.

Name	Description	Expected proposal date	Contact person and address
Permits for treatment, storage, or disposal of hazardous waste, sec. 3005.	This regulation would require that each person owning or operating a facility for treatment, storage, or disposal of hazardous waste to be granted a permit to do so either by an approved State agency or by EPA.	May 1978	Sam Morekas (WH-565), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9190.
Notification system for hazardous waste generators, transporters, stores, treaters, and disposers, sec. 3010.	This regulation would describe a 1-time notification requirement for generators, transporters, treaters, storers, and disposers of hazardous waste, which will bring them to the attention of the persons administering RCRA's hazardous waste program.	April 1978	Timothy Fields (WH-565), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9200.
Guidelines for State solid waste programs, sec. 4002(b).	These guidelines would assist States in the development and implementation of solid waste management programs.	May 1978	George Garland (WH-564), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9125.
Guidelines for Federal procurement practices, sec. 6002(e).	These guidelines will assist Federal agencies to comply with the RCRA's requirement that procured materials be composed of recycled materials to the greatest extent practicable.	September 1978.	Stephen Lingle (WH-563), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9140.
THE TOXIC SUBSTANCES CONTROL ACT (TSCA)			
Testing of chemical substances and mixtures, sec. 4	A series of rules will be issued to establish testing standards for various characteristics and effects of chemicals and to require testing of specified chemicals in accordance with the testing standards. Testing standards are currently being developed for:.		
	Oncogenicity	July 1978	Norbert Page (TS-788), Environmental Protection Agency, Washington, D.C. 20460, 202-755-4894.
	Environmental fate	do	Arthur Stern (TS-788), Environmental Protection Agency, Washington, D.C. 20460, 202-755-4863.
	Ecological effects	March 1979	Do.
Premarket notification, sec. 5	This regulation will establish procedures for submitting notices to EPA for all new chemicals.	July 1978	Blake Biles (TS-788), Environmental Protection Agency, Washington, D.C. 20460, 202-755-2482.
Contol of polybrominated biphenyls, sec. 6	The regulation would control the use of polybrominated biphenyls.	do	Larry Dorsey (TS-788), Environmental Protection Agency, Washington, D.C. 20460, 202-755-8963.
Chlorofluorocarbon emissions, sec. 6	This regulation would apply to nonaerosol uses of chlorofluorocarbons.	February 1979	Ferrial Biship (TS-788), Environmental Protection Agency, Washington, D.C. 20460, 202-755-8963.
Polychlorinated biphenyls (PCB's) manufacture and distribution, sec. 6(e).	This regulation bans the manufacturing and distribution of PCB's and products containing PCB's. It also will include a revised definition of PCB mixture.	April 1978	Peter Principe (TS-788), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0920.
General Reporting rules, sec. 8(a)	This regulation would clarify what information is required with emphasis given to reporting requirements under sec. 8(a).	December 1978	Ed Brooks (TS-788), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0932.
Records of adverse reaction, sec. 8(c)	The regulation would require industry to maintain records of adverse health reactions to its chemical products and consumer complaints about its chemical products.	September 1978.	Do.
General rule concerning health and safety studies, sec. 8(d).	This regulation will establish protocols for submitting health and safety studies to EPA for specified chemicals.	June 1978	Do.

The regulations listed below have already been proposed and appear in the FEDERAL REGISTER issue of the date indicated. Please send any substantive comments to the public comment file according to the information appearing in the preamble of the published regulation. Inquiries as to the status of these regulations can be directed to the EPA contact persons listed for each regulation.

Name	Description	Date in FEDERAL REGISTER	Comment period closing date	Contact person and address
Guidelines for existing kraft pulp mills, CAA sec. 111.	These guidelines to control sulfur (odors) from existing kraft pulp mills will allow States flexibility in establishing controls.	Feb. 23, 1978	Apr. 24, 1978	Ed Brooks (TS-788), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0932.
Control of air pollution from aircraft and aircraft engines, CAA sec. 231.	This regulation will propose, and for some classes of aircraft, repropose emission standards for large in-use aircraft to reduce HC, NOx, and CO.	Mar. 24, 1978	July 24, 1978	George Kittredge (AW-455), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2464.
Control of organic chemical contaminants in drinking water, SDWA sec. 1412.	These regulations set forth maximum contaminant levels for some organic contaminants and prescribe treatment techniques for others.	Feb. 9, 1978	May 31, 1978	Joe Cotruvo (WH-550), Environmental Protection Agency, Washington, D.C. 20460, 202-472-5016.
Motorcycles, NCA sec. 6	This regulation will set noise emission standards for new motorcycles and replacement exhaust systems.	Feb. 15, 1978	June 16, 1978	William Roper (AW-471), Environmental Protection Agency, Washington, D.C. 20460, 703-557-7747.

Name	Description	Date in FEDERAL REGISTER	Comment period closing date	Contact person and address
Guidelines for State hazardous waste programs, RCRA sec. 3006.	These guidelines are to assist States in the development of their own hazardous waste regulatory programs. The guidelines also specify minimum requirements States must meet in order to be authorized by EPA to implement their hazardous waste programs.	Feb. 1, 1978.....	Apr. 3, 1978.....	Dan Derkies (WH-565), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9190.
Criteria for classification of solid waste, RCRA sec. 4004(a).	These criteria provide a basis against which solid waste land disposal facilities can be evaluated in order to determine probability of adverse effects on health or the environment.	Feb. 6, 1978.....	May 8, 1978.....	Kenneth Shuster (WH-564), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9116.
Reporting on substances recommended for priority consideration by the Interagency Testing Committee, TSCA sec. 8(d).	The regulation requires reporting of existing health and safety studies for chemical categories as recommended by the Interagency Testing Committee.	Jan. 3, 1978.....	Apr. 3, 1978.....	Ed Brooks (WH-557), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0932.

[FR Doc. 78-8635 Filed 4-5-78; 8:45 am]

federal register

THURSDAY, APRIL 6, 1978
PART III



DEPARTMENT OF COMMERCE

Office of the Secretary

■

OPTIONS PAPER ON PRODUCT LIABILITY AND ACCIDENT COMPENSATION ISSUES

[3510-17]

DEPARTMENT OF COMMERCE

Office of the Secretary

OPTIONS PAPER ON PRODUCT LIABILITY AND ACCIDENT COMPENSATION ISSUES

The Department of Commerce chaired an 18-month interagency study on the topic of product liability. The Task Force's Final Report was published on November 1, 1977.

On the basis of that report and interest in the topic, representatives from the Office of Management and Budget and the Domestic Policy Staff of the White House asked the Department of Commerce to prepare an options paper regarding what action, if any, the Federal Government should take to address the product liability problem. That paper, which included the Department's recommendations, was forwarded to the White House on February 24, 1978.

The Department's study of product liability highlighted the *ad hoc* method by which the Federal Government tends to address issues relating to accident compensation and insurance. For that reason, the paper also set forth options suggesting how the Administration could achieve a more coordinated approach toward these issues in general.

On March 28, the Administration completed its initial review of the Department's options paper. It authorized that it be circulated for comment to agencies that had an interest in the topic. It also authorized that the options considered and the Department's recommendations be released to the public. This document is issued in response to that authorization. We invite public comment on its contents.

Comments should be addressed to Victor E. Schwartz, Chairman, Department of Commerce Task Force on Product Liability and Accident Compensation Issues, Room 5027, U.S. Department of Commerce, Washington, D.C. 20230. Comments should be forwarded within the next thirty days. The Task Force anticipates that it may receive a large number of comments and regrets that it cannot assure acknowledgment of each communication.

C. L. HASLAM,
General Counsel.

TABLE OF CONTENTS

I. THE PRODUCT LIABILITY "PROBLEM"

II. PRINCIPAL OPTIONS THAT ADDRESS THE CAUSES OF THE PROBLEM

A. Liability Insurance Ratemaking Procedures
Option 1: No further federal action.
Option 2: Adopt minimum federal standards.
Option 3: Conduct a further study of ratemaking practices and determine whether they could be best implemented by direct federal regulation.
B. Unsafe Manufacturing Practices
Option 1: Take no federal action.
Option 2: Federal product risk information-sharing program.
Option 3: Provide technical or loan assistance to small businesses for product liability loss prevention.
Option 4: Required discounts based on an insured's product liability experience and/or loss prevention techniques.
Option 5: Required loss prevention activity on the part of insurers.
C. Uncertainties in the Tort-Litigation System
1. Improvement of the Tort-Litigation System
Option 1: Leave modification to the states.
Option 2: Draft a model law for use by the states.
Option 3: Adopt a uniform federal product liability law.
2. Replacing the Tort-Litigation System With a No-Fault Compensation System
Option 1: Worker Compensation as a sole source for recovery for product-related workplace injuries.
Option 2: Additional research re practical working model for a consumer product liability no-fault compensation system.

III. OPTIONS WITH RESPECT TO NON CAUSE-RELATED REMEDIES

Option 1: Federal Insurance.
Option 2: Federal Reinsurance.
Option 3: Mandatory and Voluntary Pooling Mechanisms.
Option 4: Amend IRC to permit reserves for self-insurance.
Option 5: Establish federal charters to encourage the formation of captives, and amend the IRC to permit the deductibility of funds paid to captives.

IV. OPTIONS RELATING TO THE COORDINATION OF FEDERAL GOVERNMENT INITIATIVES IN THE AREA OF ACCIDENT COMPENSATION

Option 1: Continue present approach of legislative review.
Option 2: Establish Interagency Council on Accident Compensation.
Option 3: Establish an office for coordinating accident compensation issues in an appropriate department.

V. DEPARTMENT OF COMMERCE'S RECOMMENDATIONS REGARDING PRODUCT LIABILITY AND ACCIDENT COMPENSATION ISSUES

A. Short-Term Solutions
1. Amend IRC to permit reserves for self-insurance
2. Federal insurance and reinsurance programs should not be pursued at this time.
B. Long-Term Solutions
1. Prepare a report that would include draft product liability insurance regulation standards and would determine whether and to what extent federal regulation is warranted.
2. Draft a product liability law that could be implemented at the federal level or utilized by the states.
3. Draft legislation that would make Worker Compensation a sole source of recovery for product-related workplace accidents.
4. Study whether a practical no-fault product liability system can be developed for consumer products.
5. Develop a federal program to distribute product risk information.
6. Develop a special loan program that would permit qualified small businesses to obtain loss prevention technical assistance.
7. Draft legislation to permit the formation of captive insurance companies.
8. Develop guidelines to assist insurers in the formation of voluntary insurance pools.
9. Establish an Interagency Council to review and coordinate federal initiatives in the area of accident compensation.

[Cross references in text and footnotes are to bracketed numbers in text]

This paper will briefly describe the scope and nature of the product liability problem and set forth options for Administration action with respect to that problem. It also contains the Commerce Department's recommendations. The Department's study of product liability highlighted the *ad hoc* method by which the Federal Government tends to address issues relating to accident compensation. In that regard, the paper will also set forth options suggesting how the Administration can achieve a more coordinated approach toward accident compensation issues in general.

The paper is largely predicated on the Final Report of the Federal Interagency Task Force on Product Liability (hereinafter cited as "TFR"). The Product Liability Task Force studied the topic for 18 months in producing the report. It received detailed input from all interested Federal agencies and interest groups. Accordingly, the Task Force's Final Report may be the most thorough and balanced analysis ever produced on the subject. In that regard, there is considerable sentiment from Congress and elsewhere that the time for decisions and Administration action has arrived.

I. THE PRODUCT LIABILITY "PROBLEM"

A. THE SCOPE AND NATURE OF THE PROBLEM

"Product liability" deals with how our legal and private insurance systems compensate persons injured by products. It defines the responsibility of retailers, distributors, and manufacturers for products that cause injury.

In 1975, an apparent crisis arose in the field of product liability. A number of manufacturers and business periodicals alleged that product liability insurance had become unavailable or unaffordable. Serious consequences were implied: businesses might terminate because they were unable to obtain coverage; injured persons would be unable to enforce product liability judgments; and manufacturers would be hesitant to produce some products that would be useful to society.

Beginning in June of 1976, a Federal Interagency Task Force began an intensive study of the subject. In November 1977, it published a Final

Report. The Final Report of the Task Force found that some extraordinary assertions about the product liability problem were not true, such as some insurers' claim that [2] one million product liability claims were filed in 1976.[1] The Task Force also found that some "horror" cases related by manufacturers did not exist. On the other hand, the organized plaintiff's bar asserted that there was no product liability problem at all; this assertion also was unfounded. Discovering the truth is not easy because no source, governmental or private, has kept statistically reliable data on the number and severity of product liability claims. This much, however, seems clear:

- Product liability premiums have increased substantially for manufacturers of industrial equipment, industrial chemicals, and metal castings. Similar increases also appear to have affected manufacturers of pharmaceuticals, medical devices, power lawnmowers, sporting goods, ladders, and other high-risk consumer products. The Task Force's surveys indicated that increases from 1975 to 1976 averaged over 200 percent. Anecdotal data show much higher increases—over 1,000 percent—for some individual firms. Some manufacturers have experienced very large increases although they have suffered no product liability claims. See TFR, pp. VI-11-27.
- Product liability problems—alone—have not caused businesses to fail; however, increased product liability costs may be one of several factors that may cause small manufacturers of high-risk products to terminate operations. See TFR, pp. VI-32-35.
- Some manufacturers of durable goods who have been in business a long time may not be able to "pass on" increased product liability premium costs in the price of their products. See TFR, p. VI-26. This also may be true for small businesses in high-risk product lines.
- In general, the impact of premium increases has been greater for small as compared to larger businesses (TFR, VI-26-27).
- Circumstantial evidence suggests that some businesses may be operating without sufficient economic resources to enable them to respond to a series of substantial product liability judgments. See TFR, p. VI-34.
- Product liability problems in the pharmaceutical and medical devices industries have apparently reinforced trends against new product development. Product liability problems may also have caused some manufacturers [3] to discontinue production of existing products, especially smaller firms that produce high-risk products.
- On the other hand, increasing product liability premiums as well as the threat of high tort awards have apparently caused manufacturers to discontinue products whose potential for harm outweighs their social utility. See TFR, pp. VI-28-32.
- Increased costs of product liability insurance may affect the cost of products, although it is difficult to measure the impact precisely. Some manufacturers of machine tools have estimated that product liability premiums comprise over ten percent of the price of their products (see TFR, p. VI-28), and sporting goods manufacturers point to situations where product liability coverage already represents 15 percent of the sales price of some equipment. In the product lines studied by the Task Force,[2] the cost of insurance appears to be less than one percent of sales. Accordingly, product liability may constitute more than one percent of the price of products. Intermediate handlers, such as distributors and retailers, have also been subject to increased product liability premium costs, and they attempt to pass those costs on to the purchaser of the product. See TFR, p. VI-27.
- Some manufacturers consider product liability to be their most pressing policy issue.
- Some product liability insurers appear to have engaged in panic pricing. Lack of data makes it impossible to determine whether most product liability insurance premium increases were justified. See TFR, pp. I-21-24.

B. CALLS FOR LEGISLATION

Manufacturers, distributors, retailers, and insurers have had an intense interest in solving the product liability problem. Their impact has been felt very strongly at the state legislative level. At present, 42 states are considering product liability laws, and over 110 bills are in active status. At least a half a dozen states have already enacted laws.

[4] Some of the laws under consideration are decidedly anticonsumer. Some proposals would deny product users any recovery where they assumed the risk, were contributorily negligent, or misused the product. They also would have no recovery if some third party (such as an employer) altered the product in any material way. Other state legislation contains harsh statutes of limitations that deprive persons of their right to sue even before they are injured.

State legislatures are interested in knowing what the Administration plans to do about the product liability issue.

Congress, especially the House of Representatives, appears to have been sensitized to the product liability problem. Over 100 representatives have endorsed one form or another of a product liability tax reserve measure (discussed at p. 34 below), and approximately 20 product liability bills were introduced in the First Session.

Since the publication of the Final Report, there has been very substantial interest by a number of major industry and insurer associations and trade publications in the Administration's plans about product liability.

Publicity about the recent multimillion dollar product liability suits against Ford and General Motors has intensified public interest.

C. CAUSES OF THE PROBLEM AND THE NATURE OF THE OPTIONS SET FORTH HEREIN

The Task Force identified three principal causes of the problem: insurer ratemaking practices, uncertainties in the tort-litigation system, and the manufacture of unsafe products. See TFR, pp. I-20-30. The report also observed the tendency for each group affected by the problem to attribute the cause to the other groups. Thus, insurers claim that the problem is caused by unsafe manufacturing practices and the tort system. Attorneys claim that it has been caused by inept insurer ratemaking practices. Manufacturers, like insurers, blame the tort system. The Task Force found that in a sense, all groups were correct. Unless each of the causes is properly addressed, the problem will continue and grow worse. A remedy in one area, and not in the others, would be unsound public policy.

[5]

II. Principal Options That Address the Causes of the Problem

A. LIABILITY INSURANCE RATEMAKING PROCEDURES

The Task Force found that the highly subjective methods by which product liability insurance rates and premiums were set during the 1974-1976 period are a principal, but not the sole cause, of the problem. See TFR, p. I-21.

The Task Force also found that in the overwhelming majority of cases, insurance company sources did not rely on adequate data either in terms of the number or size of claims to sup-

[1] The ATLA has announced that a class action suit has been filed in a Connecticut Superior Court in regard to this and related issues—charging major insurance companies with deceptive advertising. See *The Washington Star*, p. 1 (2/13/78).

[2] Industrial machinery; industrial grinding wheels; ferrous and non-ferrous metal castings; industrial chemicals; aircraft component parts; automotive component parts; medical devices; pharmaceuticals; and power lawnmowers.

port premium increases that occurred in the 1974-1976 period. This factor, along with uncertainties in insurer ratemaking practices, made it almost impossible to obtain an accurate profit and loss picture for product liability insurance. See TFR, pp. V-33-40. The Task Force was unable to make a finding as to whether product liability premium increases were, as a whole, justified in the 1974-1976 period. Circumstantial evidence, however, suggested that insurers engage in "panic pricing." See TFR, p. I-23.[3]

With respect to insurer ratemaking practices, the Task Force concluded that:

—Better data should be collected for all product liability insurance premiums, losses, and claims.
—Product liability insurance rates and premiums should be more closely related to statistical assessments of product risk.
—Product liability insurance rates and premiums should be monitored to ensure that they are fair, non-discriminatory, and reasonably related to product risk.
—There is a need to promote greater financial disclosure and accountability in product liability insurance.

For a detailed explanation of these conclusions, see TFR, pp. V-47-51.

[6] Option 1: *Take no further Federal action on this topic at this time—leave improvement to the states and voluntary efforts by the insurance industry.*

Pro

- The general policy of the Federal Government, embodied in the 1945 McCarran-Ferguson Insurance Regulation Act, has been to leave regulation of insurance to the states. See 15 U.S.C. § 1-11.
- Some industry and state activity appears to be underway:
  —The Insurance Services Office (ISO), the leading insurance ratemaking organization, has stated that it has developed a new statistical plan that may help gather more data about product liability claims.
  —The National Association of Insurance Commissioners (NAIC) is sending a general questionnaire to product liability insurers in order to get more information about the product liability and an NAIC subcommittee has recommended that product liability data be separately reported in insurance policies.
  —Two states, Kansas and Minnesota, have enacted laws that require product liability insurers to report data regarding product liability insurance premiums, losses, and claims to state commissioners. Other states are likely to take some action along these lines in the future.

Con

- In the past, insurers have not been quick to police themselves, and state insurance regulation in many jurisdictions has been very weak.
- The legislative history of the McCarran-Ferguson Act shows that its intent was to promote the gathering of accurate statistical data, and not to allow insurers to set rates subjectively.
- The extent and effectiveness of voluntary action by the insurance industry are uncertain at this point. While Task Force efforts may have encouraged ISO to expedite development of its new statistical plan, it will take time to learn whether the plan will be effective.

[7]

- Neither the ISO plan nor the NAIC proposal will monitor rates and premiums to ensure that they are fair, non-discriminatory, and reasonably related to product risk.
- Last year the NAIC rejected a subcommittee recommendation that product liability data be reported on a separate line.
- Individual state action in gathering information on premiums and claims is likely to be ineffective because product liability rates are set (and thus must be evaluated) on a nationwide basis.

Option 2: *Adopt minimum federal standards for the regulation of product liability insurance.*

The Administration could draft legislation that would contain minimum federal standards for the regulation of product liability insurance. This would allow state insurance regulatory mechanisms to continue to function with a minimum of federal interference. The Federal Government would act as a clearinghouse for data collected by the states and would take some steps to ensure that regulations were, in fact, being carried out.

Pro

- Short of substituting federal for state regulation, this would be the most certain method of improving insurer ratemaking practices.
- State regulation of product liability insurance in many cases has been ineffective. This may be one reason why insurer groups have steadfastly opposed uniform federal regulation.
- Leaving this matter to state regulation can exacerbate the problem—insurers may leave states with more rigorous requirements and only write policies in states whose requirements are lax.
- The proposed approach could be implemented without establishing a new federal agency.

[8]

- The Federal Government is in a better position than the states or private organizations to collect data on product liability insurance premiums, losses, and claims. It could supply those data to the states, allowing them to review rates in order to determine whether they are fair and reasonable. This could be done within an existing department, *e.g.*, the Federal Insurance Administration of HUD.
- The General purpose of the McCarran-Ferguson Act, at least in the area of product liability insurance, appears to have been subverted: adequate nationwide data are not being collected on a regular basis.

Con

- The Final Report's conclusions on regulation of product liability insurance arguably need development. It may be better to review detailed proposals regarding insurance regulation before deciding that the Federal Government should implement them.
- It is arguably better to examine carefully what steps the NAIC and the insurance industry have taken to solve the problem before making any commitment on federal regulation.

Option 3. *Conduct a further study of ratemaking practices and determine whether they could be best implemented by direct federal regulation.*

Pro

- While the Task Force gave very careful attention to insurance ratemaking practices and analyzed remedial proposals in that area, it was not empowered to discuss the issue of the implementation of those remedies.

[9]

- Further study with a specific focus on the Task Force's recommendations would allow more input about them from consumer, manufacturer, and insurer groups.

Con

- It can forcefully be argued that the Task Force's 18-month study is a sufficient base to commence specific federal action. For example, on the basis of the report and his own investigations, Congressman John LaFalce introduced a "comprehensive legislative proposal" that would create a Federal Insurance Commis-

[3] Although the report's discussion of this issue was praised by consumer groups, the plaintiff's bar, and some congressmen, insurance groups maintain that insurance ratemaking practices were not a cause of the product liability problem. However, a very recent study by the Missouri State Senate Select Committee on Product Liability tends to confirm the Task Force's findings. Missouri Senate Select Committee on Product Liability Report at p. 12 (12/30/77).

sion to supplement state regulatory efforts.

B. UNSAFE MANUFACTURING PRACTICES

The Task Force's Final Report shows that while more manufacturers are giving greater attention to product liability loss prevention techniques, some companies—especially smaller ones—are unable to devote sufficient resources to this area. See TFR, pp. VI-47-51. While a number of federal regulatory agencies have, at times, alerted manufacturers about product hazards or defects, neither the federal nor state governments appear to have any general information-sharing program that would bring such information to the attention of all relevant businesses.

[10] While insurers claim that they are providing assistance in the area of product liability loss prevention, generally they have not provided detailed guidance to smaller manufacturers. Also, executives of a number of such companies complained to the Task Force that the present insurance ratemaking system does not create incentives for implementing product liability loss prevention programs. In that regard, they state that they do not receive credit in their premiums for undertaking such programs.

The failure of some manufacturers to utilize effective product liability loss prevention methods leads, in turn, to more product liability-related injuries and claims. This, in turn, leads to greater insurance and other costs for manufacturers and (ultimately) the product user or consumer. See TFR, pp. I-24-26.

Option 1: *Take no federal action.*

Pro

- The tort system and rising insurance rates are acting as an incentive to manufacutrers to produce safe products.
- A number of major federal agencies' full-time activity focuses on product safety.

Con

- Unsafe products are a cause of the product liability problem.
- Improvements in insurer ratemaking practices and the tort system could dull incentives to produce safe products.
- As Options 2, 3, 4, and 5 show, product safety may be improved without increasing federal regulation of manufacturers.

[11] Option 2: *Develop a specific Federal Government program of sharing product risk information with private industry.*

The Task Force's Final Report concluded that it would be useful if the Federal Government developed a coordinated program of sharing product risk information with private industry. The information would concern specific characteristics of products that are frequently associated with product-related accidents. See TFR, pp. VII-183-186. As the report noted, the Chairman of the Consumer Product Safety Commission (CPSC) has already indicated that it is interested in a greater role with respect to consumer products. OSHA (within its legal mandate) has an opportunity to gather important information about workplace products. Some of that information is directly relevant to risks that stem from the use of machine tools and other workplace equipment. At present, this information may not reach product manufacturers.

Other agencies of the Federal Government may also have information that could provide an early warning to manufacturers about product hazards. For example, a structure similar to the recently formed "Interagency Regulatory Liaison Group"[4] could be utilized to pool the information. Commerce Department field offices could be used to distribute information obtained by the Federal Government.

Pro

- Unsafe manufacturing practices are part of the product liability problem. Action that seeks to alleviate other causes of the problem but ignores product safety is unsound social policy.
- The suggested approach attempts to place government and industry in a cooperative framework.

Con

- Unless the program is carefully designed, it could lead to additional expenditures and bureaucratic waste. Agencies already have difficulty gathering product risk information.

[12]

- Manufacturers regard unsafe products as the least important cause of the product liability problem. They would regard any additional reporting requirements as anomalously compounding their problems.
- The approach will not fully meet the needs of small manufacturers with regard to the topic of product liability loss prevention. Although they may be alerted to product defects that they are not aware of, the approach does not provide the technical guidance that would lead to ongoing product liability loss prevention programs.

Option 3: *Provide means, either by directly supplying personnel or through loan programs, whereby technical assistance in the area of product liability loss prevention is supplied to small businesses.*

Pro

- Product liability loss prevention assistance could solve problems beyond product liability; it would help reduce the number and severity of accidents in general.
- This type of relief gets at the very heart of the needs of some small businesses.
- If the program were made available on a strictly voluntary basis, it could win the support of business, insurers, and consumers.

Con

- The number of government personnel capable of providing technical assistance in product liability loss prevention is insufficient. Both the CPSC and OSHA indicated to the Task Force that they could not provide direct detailed engineering advice to businesses: this would take them out of their regulatory roles and place them in direct competition with private consulting firms.
- The focus of a program of this kind would probably have to be on providing special SBA loans that might encourage small businesses to obtain product liability loss prevention advice in the private sector. This would involve uncertain new costs to the federal budget.

[13] Option 4: *Federally require insurers to build into their product liability rates an appropriate discount when insureds use proper product liability loss prevention techniques and/or have been free of product liability claims.*

There appears to be no consistent pattern as to whether insurers reduce premiums when insureds utilize effective product liability loss prevention plans. See TFR, pp. VII-177-178. Also, product liability insurers do not generally experience-rate small businesses.

In order to bring these results about, regulatory action would have to be undertaken at the state level unless a new federal statute[5] required state insurance commissioners to promulgate and enforce orders reflecting such differentials.

Pro

- Mandating an appropriate discount based on claims experience and loss prevention programs would allow firms to see a clear relationship between their efforts toward product safety and liability insurance costs. At present, many executives do not believe this relationship exists.
- The program may be particularly helpful for some small businesses that are not experience-rated.

[4] This group (composed of the FDA, CPSC, EPA, and OSHA) is cooperating to make efficient use of government resources to protect the public from the adverse effect of toxic and hazardous substances.

[5] For a discussion of problems relating to federal versus state regulation of product liability insurance, see pp. 5-9.

- Insurers are often in a very good position to determine whether an individual insured uses proper product liability loss prevention techniques.
- A regulation of this type may reduce the need for general public law regulation with regard to the design and production of products.

Con

- Since product liability insurance coverage is often sold as part of a larger package, it would be difficult to mandate a premium reduction of X dollars or a percentage of dollars per safety feature. This problem may be reduced now that more insurers are breaking out product liability as a separate line of insurance.

[14]

- There is no statistical proof that the programs will ultimately result in a lowering of the number or amount of claims.
- Effective product liability loss prevention programs would not extend to products that were manufactured in the past.
- Insurers argue that experience rating does not work for small firms.
- Both the Task Force's Legal and Insurance Studies took a negative view of rules that would force insurers to reduce premiums based on product liability loss prevention.
- A mechanism may have to be developed whereby the state absorbs a portion of the cost of the discount.

Option 5: *Federally require*[5] *that insurers assist their insureds in loss prevention.*

Some consumer-oriented insurance experts have suggested that since insurers are knowledgeable about risks they insure, they are in the best position to provide product liability loss prevention advice to insureds. While insurers appear to be more active in this area, they rarely provide detailed information to insureds who usually need it most—small businesses.

Pro

- It is arguably unsound policy to permit insurance companies to acquire expertise about product risks and utilize this information solely for the purpose of estimating the cost of injuries—not for the purpose of eliminating those injuries.
- Insurer action in this area would reduce the need for further governmental regulation of product safety. It is a method whereby private industry can regulate itself.

[15]

- Mandatory insurer Worker Compensation loss prevention programs are already in operation in Texas and Oregon: these programs may provide working models for use in the area of product liability.

Con

- Most insurance company loss personnel are generalists. They lack the specific knowledge that would enable them to provide detailed information.
- Insurers assert that requiring them to undertake full product liability loss prevention efforts would result in an increase in the cost of insurance.
- Smaller insurers would have special difficulty complying with this regulation.
- The insurance industry argues that product liability loss prevention, in the main, is the job of government and the industries themselves.
- Many insurers do not want to be "forced into a policing role which would place them in opposition to their customers." See TFR, p. VII-181.
- Insurers are concerned that the process might subject them to liability for negligent inspection. The Final Report, however, suggests that this concern can be dealt with in legislation. See TFR, pp. VII-182-183.

C. UNCERTAINTIES IN THE TORT-LITIGATION SYSTEM

Uncertainties in the tort-litigation system have helped bring about the product liability problem. Assuming there were improvements in insurance ratemaking practices and in product liability loss prevention, uncertainties in the substantive rules governing the tort-litigation system could serve as justification for continuous major adjustments in product liability insurance rates. Thus, insurers stress that in light of the current legal climate, past data are not a reliable source for ratemaking.

Product liability rules are in a constant state of change (usually with retroactive application) in each of 50 different jurisdictions. While most appellate court decisions appear to balance the economic burden on the manufacturer to produce a safe product against the probability that the product may cause injuries and the severity of those injuries, some regard [16] product liability law simply as a compensation device. Because the tort-litigation system was not designed as such, this view has created a problem for all concerned.

The Task Force found that cases which were transparently unfair to manufacturers, distributors, or retailers were relatively few in number. But since it is almost impossible to predict when courts will change product liability law and broaden the exposure of insureds, these cases may continue to cause the product liability problem to fester and possibly to grow worse.

It is within the context of tort law reform that most of the commonly proposed remedies for the product liability problem arise, *e.g.*, modifying the statute of limitations, creating a compliance with safety standards defense, eliminating punitive damages. Any effort would require decisions on all of these issues.

There are a number of options to be considered with respect to this aspect of the product liability problem. The first general approach is to find a means to improve the tort-litigation system. Under this approach, one has three basic options:

(1) Leave the matter of change to the states;

(2) Draft a model law for the states; or

(3) Draft federal product liability standards.

A major alternative approach is to abandon the tort-litigation system and develop a no-fault compensation system in the area of product liability. As the discussion below will show, this alternative is more readily achievable with respect to workplace injuries than consumer injuries.

1. *Improvement of the Tort-Litigation System.*

Option 1: *Leave modification of product liability law to the states.*

Pro

- Tort law has traditionally been left to state governance. (For a brief history of federal involvement in state tort law, see Tab A).

[17]

- The states at present are considering modification of tort law in the area of product liability. Over 42 states have introduced legislation, and over 100 bills are in active status.
- State experimentation in this area might reveal new alternatives that were not considered by the Task Force.
- The Task Force's study supplies material for the states to consider. In that respect, the Federal Government has already helped resolve problems relating to tort law.

Con

- The wide variety of legislative action at the state level would only fuel the uncertainty in the area of product liability.
- The administration could be regarded as inconsistent and anti-business in taking action with respect to tort law problems in the area of automobile accident compensation and ignoring product liability.
- Product liability rates are formed on a nationwide, not a state-by-state basis. Thus, action in any individual state is unlikely to reduce product li-

[5] For a discussion of problems relating to federal versus state regulation of product liability insurance, see pp. 5-9.

ability costs for manufacturers in that particular state.

- Many states' product liability laws will not balance the interests of consumers and manufacturers. This is because consumers (as contrasted with manufacturers) do not have well-organized lobbies or sufficient personnel to argue their cause.
- Businesses and insurers regard the tort-litigation system as the primary cause of the product liability problem.

Option 2: *Draft a model product liability law for use by the states.*

Pro

- The "hodge-podge" of current state initiatives has created a demand for a uniform product liability law that could be utilized by state legislatures.

[18]

- State legislators have expressed this interest to the Task Force.
- The American Law Institute (ALI), a potential source of drafting a uniform law, has just completed a revision of the *Restatement of Torts.* The ALI's current agenda is full, and it does not have the time and resources to undertake the development of a uniform product liability law at this time.
- The Commissioners on Uniform State Laws also have a full agenda and may not be in a position to develop a model law at this time. If they were to proceed, it would be a very lengthy process before a code were developed.
- The development of a model law would show Administration action on a matter of importance to business, but still respect states' rights in this area of law.

Con

- The development of a model law may be regarded as a halfway, "wishy-washy" approach to a serious problem. Many businesses want action now and are tired of delays.
- A model law for the states will not guarantee uniformity of action. The only model law that has had that effect is the Uniform Commercial Code where tradition and commercial necessity helped dictate the result.
- While the Federal Government has assisted the Council of State Governments in regard to state legislative proposals, it has not provided model laws for the states.

Option 3: *Adopt a uniform federal product liability law.*

Pro

- The Task Force's study suggests that a uniform federal product liability law would be a major step toward stabilizing product liability insurance rates. The relative predictability it would provide would render insurer data more meaningful.
- An Administration proposal could carefully balance the interests of consumers, insurers, and manufacturers.

[19]

- Chapter VII of the Task Force's Final Report provides an adequate resource for drafting such a law.
- Assuming that the law only covers major product liability issues, *e.g.,* how long a manufacturer will be responsible for injuries caused by its product (see Tab B), the code can be drafted expeditiously and limit federal preemption to areas that are most important.
- In the absence of guidance from the Administration, product liability bills of varying quality will continue to be developed in Congress. The creation of these bills by congressional staffs and subsequent review by the Administration will involve considerable duplication of effort.

Con

- Aside from the Federal Employees Liability Act (1909), the Federal Government has generally left the development of tort law to the states, although one can discern a trend away from this policy. A significant recent example is the Administration's endorsement of federal no-fault insurance in the area of automobile accidents.
- The enactment of a federal product liability law is likely to be time-consuming.

[20] 2. *Replacing the Tort-Litigation System With a No-Fault Compensation System.*

As the Final Report details, some academic experts have argued that efforts to resuscitate the tort-litigation system are doomed to failure; they believe that it is necessary to begin anew and handle the problem of accident compensation through a no-fault compensation system.

The Task Force report recognized the important distinction between workplace and non-workplace injuries. In the area of workplace injuries, there presently exists a no-fault system for injuries that occur in the course of employment. That system, commonly known as Worker or Workmen's Compensation, is operated at the state level and supplies a limited, but almost automatic recovery for injuries workers sustain in the course of employment.

On the other hand, there is no existing vehicle for no-fault recovery with respect to consumer product-related injuries. The Task Force studied no-fault product liability systems in some detail (see TFR, pp. VII-212-228), but did not develop a potential model. Rather, the report set forth key issues that must be resolved if a model were to function effectively in practice.

Here we will present two options dealing with no-fault—one for workplace and one for consumer injuries.

Option 1: *Develop a system whereby an existing no-fault compensation system—Worker Compensation—would become a sole source for recovery in product liability cases arising from workplace accidents.*

According to a recent survey of approximately 24,000 product liability closed claims, only 11 percent of product liability incidents involve workers injured on the job. Nevertheless, the survey indicates that these incidents account for over 42 percent of the total payments for bodily injury claims. See ISO Closed Claim Survey Highlights, p. 1 (1977). This confirms an impression strongly conveyed by the 18-month Interagency study—claims based on workplace products are a very important part of the product liability problem. In that regard, many of the trade associations that are most active in the area of product liability represent manufacturers of machine tools and other workplace instrumentalities.

It is important to note that many workplace injury claims are preceded by Worker Compensation payments to an injured party. The injured party then brings a claim against the product manu- [21] facturer. The net result is high transaction costs [6] and, in many situations, an unfair allocation with respect to the burden of the cost of the accident.

In that regard, in a number of states, the interaction of common law rules and no-fault Worker Compensation may result in the manufacturer of the workplace product paying the entire out-of-pocket cost of the injury plus payments for pain and suffering. This result occurs because the product manufacturer is unable to place a portion of the cost of that injury on a negligent employer. See TFR, pp. VII-89-99. After weighing many considerations, the Task Force concluded that the development of Worker Compensation as a sole source for recovery in product-related workplace accidents should be carefully considered in any more general Worker Compensation legislative reform. See TFR, pp. VII-103-112. The pros and cons are set forth below.

Pro

- The workplace injury is a vital part of the product liability problem—Administration efforts toward curing it will be well received by the machine tool and related industries.
- Labor is unlikely to object to the sole source remedy if the worker is given

[6] *I.e.,* court expenses, plaintiff and defense attorney fees, etc.

a *quid pro quo* for his giving up his product liability tort claim.

- One method of achieving this is to increase the injured party's Worker Compensation payments in exchange for foregoing his tort rights against the product manufacturer. This exchange could best occur in the course of the development of overall federal Worker Compensation standards.
- With input from relevant government agencies, the Administration is in a good position to develop a balanced proposal that would ensure that a worker received an appropriate benefit for foregoing his third-party claim.
- The proposal could also ensure that a manufacturer of a defective product contributed to the worker's award. The Final Report develops suggestions as to how this might be achieved. See TFR, pp. VII-110-112.

[22]

Con

- It will be very difficult to balance the interests of workers, employers, and manufacturers in the development of this remedy.
- Employers who do not produce workplace products will be concerned that the proposal will increase Worker Compensation costs.
- Some of the extreme unfairness against manufacturers of workplace tools might be eliminated by modifying rules in the tort-litigation system. Some of these approaches include:

  —Permitting manufacturers the right to bring a contribution claim against negligent employers when workers bring tort claims against manufacturers based on workplace product-related injuries. See TFR, pp. VII-89-95.

  —Reducing or eliminating the right of Worker Compensation carriers to bring a subrogation action when workers file product liability claims against manufacturers. See TFR, pp. VII-95-99.

[23] Option 2: *Conduct additional research as to whether a practical working model for a consumer product liability no-fault compensation system can be formulated.*

The Task Force's study noted that unless the tort-litigation system can be stabilized, pressures for developing a no-fault system in the area of product liability will continue. It also pointed out that these pressures will accelerate if Worker Compensation is made an exclusive remedy for product-related injuries that occur in the workplace.

The report outlined problem areas that would have to be resolved in a practical no-fault product liability system. These would include:

(1) Problems relating to coverage.

(2) Problems of causation and other individualized issues that have a special importance in the area of product liability.

(3) Problems relating to how the system could place proper incentives for risk prevention on manufacturers whose defective products cause injury.

(4) Problems relating to administration—could the system work without the creation of a new large government agency?

The Task Force's study suggested that it was uncertain whether a practical no-fault first-party system could be developed in the area of product liability—a system that both large and small private insurers would be willing to underwrite and service at insurance rates that would be affordable for both large and small businesses. Nevertheless, the Task Force did not conclude that it was impossible to develop such a system—this was one of the most significant areas where the report called for more research. See TFR, pp. VII-202-208.

With respect to the option of conducting this research, the major pros and cons are:

Pro

- The Administration has already supported a no-fault compensation system for injuries that arise out of automobile accidents. It would be consistent policy to examine fully whether a similar system could be utilized in the area of product liability.

[24]

- Once no-fault systems are enacted in one area, they may create a need to apply them in another, *e.g.*, no-fault for automobile accidents could easily lead to a need for no-fault in the field of automobile manufacturer product liability.
- Improvements in the tort-litigation system itself can only reduce the cost of product liability judgments. While this process may stabilize product liability rates, it will not cut transaction costs, which might be reduced by a no-fault system.
- A number of persons in the academic community believe that a no-fault compensation system is the optimum product liability reform—it is argued that such systems can result in *more* persons being paid their *real* product injury-related losses. In light of the potential benefits offered by such systems, they are worth further exploration.
- The Task Force's Final Report provides a carefully delineated basis for the study of such a system—any further study would not have to begin anew.
- No-fault systems may be of great utility in limited product areas, *e.g.*, pharmaceuticals. A further study of the matter will help expand upon this possibility. See TFR, p. VII-31.

Con

- Assuming the Administration determines that a uniform product liability law should be drafted, it may seem inconsistent to study no-fault product liability systems at the same time. It is arguable, however, that there is consistency in that the former would resolve an immediate problem and the latter would determine whether there is a practical possibility of using a no-fault system should the need arise in the future.
- In general, there will be some critics of any project that "calls for more study" in the area of product liability. No-fault, however, might be one of the least objectionable areas in this regard.

[25]

- No-fault systems are of great concern to members of the trial bar—they are still in vigorous opposition to automobile no-fault. They will argue that the success of automobile no-fault has not been proved and that it is an inappropriate time to develop no-fault in other areas.
- It is possible that universities or other private institutions might do further study of product liability no-fault. The government could take a "wait and see" attitude for the next year before undertaking such a project.

[26]

III. Options With Respect to Non Cause-Related Remedies

The Task Force examined proposals that treat the symptoms, as contrasted with the causes, of the product liability problem. Purportedly, such remedies might reduce the costs of product liability insurance; however, they could also camouflage the causes of the problem, thereby delaying meaningful reform. On the other hand, cause-related remedies will take some time to implement: non cause-related measures may have the advantage of providing immediate relief to those who need it most. We have selected six of the most significant proposals for evaluation.[7]

Option 1: *A Federal product liability insurance program.*

A federal product liability insurance program would involve the establishment of a government mechanism that would underwrite and set rates for product liability insurance. Perhaps the closest analogy would be the Fed-

[7] Others include: Assigned risk plans, TFR, p. VII-128; Mandatory product liability insurance, p. VII-191; Unsatisfied judgment funds, p. VII-195; Claims-made policies, p. V-6.

eral Crop Insurance Corporation (FCIC) which was created in 1938 with the authority to insure producers of wheat on a national basis against loss of yield due to unavoidable causes. The FCIC is wholly government-owned with capital stock of $100,000,000. Participating farmers pay a premium for the protection they get against crop losses. The premiums are designed to cover losses and provide for a reasonable reserve, exclusive of administrative costs. Most of the administrative costs are paid from appropriations.

Another example of direct federal insurance is the Federal Crime Insurance Program. That program is designed to make crime insurance available to residents and businesses at affordable rates in states where it is not otherwise available. Since unavailability is a predicate for its operation, the program would not appear to be an analogy for the product liability situation where it is affordability, not availability, that is the problem for most potential insureds.

[27]

Pro

- A federal insurance program would provide an independent measure of whether private sector rates are fair and equitable, as well as additional data.
- This is the most direct way to assure that product liability insurance is made available to those who need it—without intermediary insurance mechanisms.
- The Federal Crime Insurance Program and Crop Insurance Programs have been argued as precedents. Manufacturers also cite the Swine Flu program as an example of where public policy led the government to shield manufacturers from strict liability.

Con

- Direct federal product liability insurance would create federal competition with private industry, which would involve enormously complex issues of competitive ratemaking. This did not occur in the Federal Crime Insurance Program as that type of insurance was unavailable.
- The swine flu situation was unique: the government itself wished to distribute the swine flu vaccine and manufactures agreed not to make a profit on that vaccine.

Option 2: *Federal Reinsurance.*

Reinsurance is insurance purchased by an insurance company to transfer a portion of its liability to other insurers. In the private market, the policyholder has no part in the reinsurance transaction and usually no knowledge of it. If a policy holder has a loss, the insurer that issued the policy pays the claim and looks to the reinsurer for recovery of the portion transferred to the reinsurer.

Senator Culver has introduced a bill (S. 527) which would establish a mechanism within the Small Business Administration for federal facultative[8] reinsurance. The program would probably require some federal subsidy; otherwise, the mechanism would be unlikely to reduce the cost of insurance or increase its availability. Premiums would be reduced if insurers passed along to individual insureds the savings they obtained by being able to cede a portion of their insured risks to the federal reinsurer.

[28]

Pro

- Reinsurance would not disrupt normal relationships between insureds, agents or brokers, and insurers.
- Insofar as insurer capacity[9] remains a problem, federal reinsurance could help.
- The subsidy cost of a federal reinsurance program would be less than private sector costs because of the absence of tax or profit requirements.[10]
- Assuming savings were passed on to insureds, the program is more likely to benefit small businesses than other non cause-related remedies discussed here—with the exception of direct federal insurance.

Con

- Since federal funds would be used, it would be desirable for insurance to flow only to manufacturers who engage in reasonable loss prevention methods; however, this goal would be very difficult to achieve in the context of reinsurance.
- A reinsurance program will increasingly comouflage the basic causes of the problem as more federal funds are pumped in.
- One possibility is to establish the program for states that are willing to adopt other measures that will address the causes of the problem. It should be noted, however, that if only a few states take advantage of such a program, the causes of the problem will not be addressed—as has been emphasized, product liability insurance is rated on a national, not a local, basis.
- Effectiveness will be difficult to assure since reinsurance is dependent, ultimately, on the willingness and ability of primary insurers to write product liability insurance.

[29]

- A federal product liability reinsurance mechanism would have unique problems:
  - —Unlike prior situations where federal reinsurance has been utilized, the problem here is not insurance availabilty, but affordability.
  - —Prior situations dealt with property insurance, where the value of underlying risks is known and potential exposure is not "open-ended."
  - —Private industry would be a competitor in the business of product liability reinsurance.
- So long as the basic causes of the product liability problem are not addressed, the need for "short-range" remedies such as reinsurance will continue.
- A federal reinsurance program would require a substantial bureaucratic mechanism.

Option 3: *Establish mandatory and voluntary pooling mechanisms.*

A product liability insurer is less vulnerable to the full impact presented by a high-risk policyholder if the insurer's exposure to loss can be effectively spread among many insurers. (See TFR, pp. VII-130-131). This is the essence of insurance "pooling." While a broader insurance pool does not reduce the number or severity of claims, it does reduce administrative costs and also diminshes an insurer's need to be very conservative or overly subjective in product liability insurance ratemaking.

Insurance pools can be voluntary, where insurers agree to pool risks, or mandatory, where the state forces pooling.

[30] *Voluntary Pooling Mechanisms*

Voluntary insurance pools would require extensive cooperation among insurance companies. Participating companies would probably have to place all business of a specified type within the pool. The Administration could encourage voluntary pooling through guidelines[11] to assist in the formation of such pools. See TFR at p. VII-142.

Pro

- Effective voluntary pools would eliminate the need for mandatory pooling.
- Voluntary pooling has been used with success in the aircraft manufacturing industry.

[8] Facultative reinsurance is written on a policy-by-policy basis; treaty insurance, by contrast, covers an entire line of insurances. See TFR, P. V-43.

[9] One measure for determining capacity is the premium to policy surplus ratio. See TFR, pp. V-36-38.

[10] The Federal Government already has some experience with reinsurance mechanisms under the Federal Urban Property Protection and Reinsurance Act of 1968, as amended.

[11] These could be legislative or antitrust guidelines.

- A national voluntary pool might achieve the following benefits:
  —Creation of a highly skilled staff to underwrite and evaluate risks.
  —Centralized statistical and claims information.
  —More efficient risk spreading.
- Voluntary pooling does not cost tax dollars.

Con

- There is no assurance that insurers are willing to from voluntary pools.
- Possible anti-competitive problems might result from voluntary pooling—especially if the group had the power to exclude certain insurers.

[31]

- Guidelines for voluntary insurance pools would themselves have little, if any, immediate impact on the product liability problem.
- Guidelines might result in only marginal lowering of product liability rates.
- The wide diversity of hazards in product liability makes it unlikely that voluntary pools will be developed in a mulitplicity of product lines (although certain product lines, e.g., metalworking equipment, automobile tires, have enough characteristics in common that voluntary pools might be established).

Mandatory Pooling Mechanisms

Mandatory insurance pools compel insurers to underwrite certain risks. Each member insurer is required to "participate" in the operations of the association by bearing a portion of the operating expenses and losses sustained. Usually the predicate for participation is doing business within a jurisdiction. See TRF, p. VII-136.

Mandatory insurance pools have been utilized in the area of medical malpractice under the rubric "Joint Underwriting Associations." In the area of product liability, mandatory pools would only be effective at the federal as opposed to the state level. See TFR, pp. VII-115-117. Therefore, the necessary predicate of mandatory product liability pooling is federal regulation of insurance.

Pro

- Since a number of insurers and others have shown a lack of interest in forming voluntary product liability pools, pooling may be possible only if mandated.
- Mandatory pooling can achieve a very broad grouping of product liability risks.
- Mandatory pooling would make individual insureds bear the cost of the product liability problem; the Federal Government would not subsidize risks.

Con

- Mandatory pooling raises the difficult issue of whether all product risks should be forced into the pool. If the pool were non-exclusive, underwriters in the voluntary market could afford to be very selective. On the other hand, if it were made exclusive, good risks would be forced to subsidize bad ones.

[32]

- Mandatory pooling might cause some companies to refuse to write product liability insurance of any kind.
- Legislators may be tempted to broaden the pool beyond product liability.
- Mandatory pooling would require complex legislation in regard to how losses should be recouped. See TFR, p. VII-141.
- The creation of mandatory federal pools necessarily involves all the problems of federal regulation of insurance.[12]

Option 4: *Amend the Internal Revenue Code to permit qualified businesses to set aside a portion of their pre-tax income to fund a specific reserve for self-insurance for product liability claims.*

The Internal Revenue Code permits a business to deduct a product liability loss from current earnings *after* a loss has been suffered. See Int. Rev. Code of 1954, § 165. Likewise, the payment of product liability insurance premiums is a tax-deductible expense, In contrast, if funds are set aside in a self-insurance trust, they are not deductible.

The product liability problem might be alleviated for some businesses if they were permitted to set aside a portion of their pre-tax income to fund a specific reserve that would be a form of self-insurance for product liability claims. The fund would pay for settlements and judgments in product liability lawsuits and possibly defense investigation costs. The Code would be amended so that specified contributions to this fund would be tax-deductible and the fund would not be subject to the accumulated earnings tax. A model act (with section-by-section explanatory commentary) is set forth in Tab C.

Pro

- This remedy will encourage small businesses that are now "going bare" to set aside funds in a self-insurace trust; thus, it will help assure that consumers obtain a full tort recovery.

[33]

- It will permit small businesses that have a good safety record to obtain a practical benefit from that record. At present, most product liability insurers do not allow small businesses to benefit directly from a claim-free experience. See TFR at p. VI-26.
- By stimulating greater use of self-insurance, it should reduce demand for product liability insurance (particularly for some adverse risks) and increase its availability, thereby reducing costs.
- Perhaps the greatest benefit of the remedy is that it will permit businesses to make greater use of deductibles—this in turn will reduce their insurance costs.
- It may encourage product liability loss prevention techniques since the manufacturer's own funds are at risk.
- It will give companies more control over litigation, perhaps reducing settlements and actual costs.
- Because bills already exist, this remedy could be implemented quickly.
- It may encourage insurers to be more accurate in rate setting because of the potential competition of self-insurance.
- A properly structured bill would involve less long-term expense than federal insurance or reinsurance programs.
- This approach could be implemented without a new bureaucracy.

Con

- The proposal will benefit only those small businesses with product liability problems that can afford to set aside funds in a reserve. (Approximately 40 percent; see NFIB[13] Survey, p. 13, 1977).

[34]

- Unless carefully designed with appropriate penalties, the device could become a new tax loophole.
- The device could become a troublesome precedent for additional tax deductions for self-insurance against other risks.
- Permitting reserves of this kind would not be in accord with the Financial Accounting Board Standards, which hold that financial statements can be misleading if a company establishes such reserves.

Option 5: *Establish federal charters to encourage the formation of captive insurers, and amend the Internal Revenue Code to permit the deductibility of funds paid to captives.*

A captive insurance company is one that is organized by a firm or group of firms to insure their own risks. A pure captive is a wholly-owned subsidiary which insures the risks of its parent and its parent affiliates. A hybrid captive is a trade association or industry captive owned by a number of firms in the same industry . This type, which

[12] See pp. 5-9.

[13] National Federation of Independent Businesses.

insures common risks, is somewhat like a cooperative.

The law might encourage the formation of captives in two basic ways. The first is to modify insurance regulatory law by imposing less stringent requirements on captives than on standard insurance companies. One state, Colorado, has modified its insurance law to permit the formation of captive insurance companies. See TFR, pp. VII-161-163.

The second is to modify federal tax law to favor the formation of captives. A recent IRS ruling (Rev. Rul. 77-316) indicates that if a domestic corporation pays insurance premiums to a wholly-owned foreign insurance subsidiary, those premiums are not deductible.

The attached Department of Commerce proposal (Tab C) permitting the deduction of self-insurance tax reserves also permits the deduction of a portion of the premiums paid to domestic captives. It does not make capital payments to captives deductible. Nor does the bill modify insurance law to encourage the formation of captives.

[35]

Pro

- Many small businesses inadequately capitalized to benefit from a tax reserve measure can—through trade associations—utilize captives.
- The Federal Government is in the best position to coordinate the relationship between the Internal Revenue Code and appropriate rules for the formation and regulation of captives.
- Captives permit parent companies to benefit from reinsurance in the private insurance market, which is not possible under self-insurance tax reserve measures.
- Captives provide many of the benefits of self-insurance programs, *e.g.*, experience-rating, incentives for loss prevention, control over litigation.
- Captives may allow useful comparison with private product liability insurance rates.

Con

- One state already has a law on captives. It would be useful to have more experience under this law before drafting model legislation.
- Developing a model law raises the difficult issue of whether the Federal Government itself should get into the business of chartering captives.
- The Commerce Department proposal (Tab C) permitting formation of self-insurance reserves and the deduction of a portion of the premiums to domestic captives may stem the need to draft a model law on the subject. This is due to the fact that the provision will encourage states to draft their own laws.

[36]

IV. Options Relating to the Coordination of Federal Government Initiatives in the Area of Accident Compensation

In the course of its study of product liability, the Department realized that it was examining only a small part of a growing national problem area: how to apportion the costs of accidents. In the past decade, the Federal Government has been repeatedly drawn into this problem—millions of dollars have been spent studying it. Thus, major studies have been conducted on medical malpractice (HEW), automobile accident compensation (DOT), and Worker Compensation (a National Commission and a DOL-Interdepartmental Task Force).

At present, there are a number of accident compensation problem areas under consideration within the Federal Government. Each initiative is being undertaken separately. For example, study efforts include:

- The Department of Labor is currently considering whether federal standards should be developed for Worker Compensation. Federal standards have the potential of effecting major changes in encouraging (or discouraging) workplace safety. As indicated earlier, these changes could also affect product liability law.
- HEW is studying liability for personal injuries arising out of vaccine immunization programs (the study was requested in August 1976, under the Swine Flu Act, Public Law 94-380). The topic area of the report is part of the product liability problem. (HEW coordinated its efforts with Commerce.)
- Recently, the Administration authorized the formation of an Interagency Task Force on Workplace Safety and Health, which may explore the issues of how to compensate workplace accidents and how to improve the safety of workplace products, both of which were studied and considered by the Product Liability Task Force. See Work Plan, Interagency Task Force on Safety and Health, pp. 26-27 (1/12/78).

[37] Some initiatives affecting legislation include:

- The Administration's endorsement of a bill which provides basic standards for state-level no-fault benefit plans concerning the compensation and rehabilitation of motor vehicle accident victims. This bill involves federal preemption in a major area of state tort law. The bill will also have important impacts on both liability and accident insurance. One long-range impact of the bill in the area of product liability is a likely increase in the number of claims against automobile and component part manufacturers.
- The Administration has endorsed the Victims of Crime Act of 1977 (H.R. 7010), which provides grants to states for payment of compensation to persons injured by certain criminal acts. It can be argued that if the government aids crime victims because of the nature of their plight, then it should aid all persons similarly injured, be they crime or accident victims. See H.R. Report No. 95-337, p. 16 (95th Cong., 1st Sess.) (1977).
- The Senate Foreign Relations Committee will soon decide whether to ratify Montreal Protocols 3 and 4 which increase commercial airlines' liability for death or injury on overseas flights. If the protocols are approved, this would bring into consideration a CAB-approved "Supplemental Compensation Plan". This plan would impose the purchase of mandatory insurance coverage of up to $200,000 on each international traveler, adding the cost of its premium to the price of the ticket. This could be an important precedent for handling other types of accident compensation issues.
- A bill establishing a Comprehensive Federal Plan for dealing with liability for damages caused by oil spills from vessels on the navigable waters of the U.S. (and adjacent high seas) has passed the House as well as the Senate Commerce Committees.[14] The bill imposes strict, limited liability on vessel owners. It also establishes a compensation fund that is supported by a levy on oil movements.

[38]

- The Office of Federal Procurement Policy has proposed legislation to authorize executive agencies of the government to indemnify government contractors against risks in excess of required or available insurance and to provide for interim payments for relief to the public. Only some victims of accidents would receive federal reimbursement. Here, as compared to the approach in the Victims of Crime Act, persons would receive full tort recovery rather than their basic out-of-pocket economic costs.
- The Price-Anderson Act provides limited liability for atomic power plant accidents. Its constitutionality is being challenged in the U.S. Supreme Court (*Duke Power Company v. Carolina Environmental Study Group*, Docket No. 77-262). Justice is arguing in favor of an arbitrary ceiling on total compensation under the Act. This aspect of the Price-Anderson Act is inconsistent with the ap-

[14] See Report of the Senate Committee on Commerce, Science and Transportation on S. 2083, 95th Cong., 1st Sess. (1977).

proach proferred in the Office of Federal Procurement Policy's proposed legislation referred to above.

- Within the next two years, the Administration may be asked to take a position on S. 1710, a bill which authorizes the issuance of Federal charters for conducting the business of insurance and provides for the guarantee of insurance obligations. The topic matter of this bill could touch upon all of the areas considered above.

Lack of coordination is not surprising. Only recently have major problems of accident compensation been brought to (and in some cases, almost forced upon) the Federal Government. Moreover, expertise in the areas of both tort and insurance law is an extremely limited resource in the Federal Government. The following are three basic options regarding the issue of whether a more systematic method of considering accident compensation issues in the Federal Government should be established.

Option 1: *Continue the present approach.*

Under the present system, the review of federal initiatives in the area of accident compensation is handled under the [39] auspices of OMB Circular A 19: proposed legislation is circulated among the agencies for comment and OMB then synthesizes the commentary.

Pro

- If the bill reaches persons with expertise in a number of agencies, good commentary is obtained.
- Some OMB staff have made and are making strong attempts to see that federal policy in this area is coordinated.
- Because most federal initiatives in the area of accident compensation are relatively new, it may be premature to change the present system.
- If the need for more coordination arises, outside specialists could always be consulted.

Con

- The present system does not appear to be producing coordination. As the issues set forth on pp. 36-38 show, there is clearly a lack of long-range planning in this area.
- Offices are often asked to do work that is not within their charter. For example, the Federal Insurance Administration of HUD, whose legal responsibilities are to oversee federal flood, urban, riot and crime insurance programs, is frequently relied on to study and comment about a wide variety of insurance proposals (*e.g.*, automobile no-fault).
- The general processs of legislative review utilized by OMB does not always cover federal studies or federal litigation relating to accident compensation.

Option 2: *Establish an Interagency Council on Accident Compensation.*

OMB and the Domestic Policy Staff could take a first step toward coordinating the Federal Government's consideration of accident compensation issues by establishing an Interagency Council that would improve coordination and long-range planning in this area. The council would be composed [40] of members from OMB, CEA, and agencies with accident compensation experience, *e.g.*, DOC, DOL, DOT, HEW, and DOJ. The Council's mandate would be to examine past and present federal initiatives in the area of accident compensation and establish a review procedure for considering such issues in the future.

Pro

- The approach will provide a rational response to the accident compensation problem before it reaches crisis level.
- The OMB review procedure would not be preempted, only supplemented.
- It will provide a clearer picture as to whether more coordination is necessary.
- An interagency structure would prevent "empire building."
- It is a practical method for finding out more about individual departmental initiatives in the area of accident compensation.

Con

- Interagency mechanisms are sometimes a slow way to resolve immediate problems.
- The suggested approach may become lost in a maze of other interagency efforts; responsibility will be more clearly focused if a specific department is given primary responsibility.

Option 3: *Establish an Office for Coordinating Accident Compensation Issues in an Appropriate Department.*

The time may be ripe to establish an office that would have expertise in the area of accident compensation issues. This office would review legislative initiatives, analyze new problems, and coordinate accident compensation matters that arise in various departments. [15]

[41]

Pro

- Such an office would be the quickest way to achieve greater coordination.
- If action proceeds on accident compensation issues in the next three years as it has in the past year, there is a need for prompt action in order to avoid inconsistent and perhaps unwarranted policy decisions in the accident compensation area.
- This approach will fix responsibility on a specific department in a new and important area of Federal Government activity.
- If the advice and assistance of other agencies can be obtained informally, a formal interagency mechanism could be avoided.

Con

- The designated agency could ignore (or not seek) input from other agencies with expertise.
- It is arguably premature to establish a specific office with a coordinating role.

[42]

V. Department of Commerce's Recommendations

While the options set forth in this paper are divided according to those that address the causes of the problem and those that merely alleviate it, the Department's recommendations below are divided into short-term and long-term.

A. SHORT-TERM SOLUTIONS

The principal options that could be implemented within a relatively short period of time are a federal insurance program (pp. 26-27), a federal reinsurance program (pp. 27-29), and permitting qualified businesses to set aside a portion of their pre-tax income to fund specific reserves for self-insurance against product liability claims and related costs (pp. 32-34).

1. THE INTERNAL REVENUE CODE SHOULD BE AMENDED TO PERMIT QUALIFIED BUSINESSES TO SET ASIDE A PORTION OF THEIR PRE-TAX INCOME TO FUND A SPECIFIC RESERVE FOR SELF-INSURANCE AGAINST PRODUCT LIABILITY CLAIMS AND RELATED COSTS.

Permitting qualified businesses to set aside a portion of their pre-tax income to fund a specific reserve for self-insurance against product liability claims and related costs has the potential of providing immediate relief to both small and large businesses affected by the product liability problem. The principal way it will help small businesses is by allowing them to utilize higher deductibles and thus lower the cost of their product liability insurance. This remedy will also encourage the use of product liability loss prevention and may, by reducing demand for product liability insurance, serve to reduce its price.

The remedy will not meet the needs of all small businesses—some of them have insufficient capital to utilize it. Also, unless carefully structured, it could establish a new loophole in the Internal Revenue Code. The Department has given very careful consideration to this aspect of the remedy and

[15] This option is only sketched herein: if it is of interest to the Administration, the Department would be pleased to provide a more detailed proposal.

has drafted a model bill (with a section-by-section analysis) (Tab C). It has forwarded the bill to the Department of Treasury for a tax evaluation. The Department recommends that the Administration circulate the bill for commentary by all appropriate agencies.

[43] There is strong congressional interest in this remedy and there may be an attempt to enact it in the Second Session. Therefore, the Department recommends that a prompt decision be made regarding its proposal. For the pros and cons with respect to this remedy, see pp. 32-34.

2. THE DEPARTMENT RECOMMENDS THAT THE ADMINISTRATION NOT PURSUE EITHER A FEDERAL INSURANCE OR A REINSURANCE PROGRAM RELATING TO PRODUCT LIABILITY.

While federal insurance and reinsurance programs may lower insurance costs for all businesses suffering serious product liability insurance problems, the potential cost and complications inextricably connected with the implementation of these options suggest that they should be reserved in case the product liability problem reaches emergency proportions.

At this time, the risk is too great that these remedies will result in federal funds camouflaging, rather than resolving the product liability problem. For the pros and cons with respect to these remedies, see pp. 26-29.

B. LONG-TERM SOLUTIONS

The product liability problem can be resolved, but it will take a balanced program that addresses each cause that brought the problem about—inadequate insurer ratemaking procedures (Recommendation 1), uncertainties in the tort system (Recommendations 2-4), and unsafe manufacturing practices (Recommendations 5-6). While one can speculate as to which of the causes is paramount, it is clear that a program that addresses one cause and not the others will not resolve the problem. For example, removing major uncertainties in the tort-litigation system will do little good if insurers continue to rate product liability insurance in a highly subjective manner.

There are also some viable long-term options that would add stability to the product liability system although they do not address its root causes (Recommendations 7 and 8).

Finally, one long-term option is procedural and goes beyond the product liability problem: it provides a means for coordinating federal initiatives in the area of accident compensation (Recommendation 9).

[44] 1. PREPARE A REPORT THAT WOULD INCLUDE DRAFT PRODUCT LIABILITY INSURANCE REGULATION STANDARDS. THE REPORT SHOULD INDICATE WHETHER AND TO WHAT EXTENT DIRECT FEDERAL REGULATION OF PRODUCT LIABILITY INSURANCE IS WARRANTED.

A clear and continuing cause of product liability problems is the ratemaking practices engaged in on the part of insurers. While the general topic of insurance regulation has been left to the states under the McCarran-Ferguson Act, the rationale for that exemption was, in part, to allow for pooling of statistical data and other ratemaking activities. The absence of effective action on the part of insurers and regulators in this precise area may have contributed to "panic pricing" of product liability insurance.

The impact of the Task Force report may cause insurers to improve their ratemaking practices voluntarily, although it is still too soon to tell whether this will occur. The National Association of Insurance Commissioners may also take steps to improve the general situation. Last year, however, the NAIC rejected a proposal that called for improved reporting of product liability data on the part of insurers. While some individual states have passed statutes calling for improved data collection, decentralized data reporting requirements may only result in increased insurance costs—the nationwide data base that is needed will still be unavailable.

On the other hand, any step toward federal regulation or the creation of federal standards for insurance is a major change in policy. This fact, plus the need for careful consideration regarding the nature of improved regulation, led this Department to conclude that the best approach would be to prepare a report that would include draft standards for the regulation of product liability insurance; it would also indicate whether direct federal regulation is warranted. The report would include draft regulations which would:

(a) Indicate what data should be supplied by product liability insurers.

The Task Force's Final Report detailed that product liability insurance rates for most risks are based on subjective estimates of anticipated loss costs. It is not currently possible to show direct correlations between premiums and product risks [45] and significant unexplained differentials exist among premiums charged firms producing similar products. The Final Report suggested that data on all product liability claims should be collected on a continuous basis, and that untrended results should be published annually. On the other hand, insurers can justifiably argue that at some point, the cost of collecting data outweighs any benefits it may provide.

The report would determine what data should be collected and whether it is necessary for the Federal Government to take any action to accomplish that goal.

(b) Indicate whether premiums should be based in part on an insured's past loss experience and/or implementation of product liability loss prevention techniques.

There appears to be no consistent pattern as to whether insurers reduce premiums when insureds utilize effecitve product liability loss prevention plans. Also, many (especially small) businesses do not appear to benefit from good product liability loss experience. There are serious complications in requiring or mandating discounts in these areas, but it is sufficiently important to warrant consideration of whether any federal action is necessary to achieve this result. For the pros and cons with respect to this specific item, see pp. 13-14.

(c) Establish a mechanism that would assure that product liability insurance rates and premiums are fair, non-discriminatory, and reasonably related to product risk.

The Task Force study and recent congressional hearings show that state insurance regulators focus their attention on ensuring that product liability insurance rates are sufficient to assure the solvency of insurance companies. Little attention has been given to ensuring that product liability rates and premiums are not excessive. The report would indicate how a regulatory mechanism might achieve this goal and whether any federal action is necessary in that regard.

(d) Indicate how insurers should report profit and loss specifically for product liability.

The Task Force study suggested that insurers should be required to report to state insurance commissioners on a basis that assumes a continuation of business and takes into account [46] interest earned on reserves for claims. Under the present system, which consistently deals with estimated rather than real losses for a broad category of liability coverage, it is impossible to determine an accurate picture of profit and loss in the area of product liability. The report would indicate how insurers should report profit and loss in the area of product liability and also conclude whether any federal action is necessary to implement such reporting.

(e) Indicate whether it is necessary to regulate insurers in regard to their providing loss prevention assistance to their insureds.

In the course of their business, insurers gather significant information about product hazards: every product liability claim is a potential source of this information. On the other hand, the Task Force study showed that insurers rarely provide detailed information about product liability to insureds

who need it most—small businesses. If insurers took a more active role in this area, it would reduce the need for further governmental regulation of product safety. Some states already require insurers to provide loss prevention assistance to insureds in the area of Worker Compensation. On the other hand, as this paper has indicated, many strong arguments can be raised against this requirement, the most important being that it would raise the cost of product liability insurance. Nevertheless, the pros and cons appear sufficiently balanced for further consideration to be given as to whether any regulation is necessary with respect to this topic. See pp. 14-15.

The Department recommends that the report be prepared within a ten-month period of time. For options relating to whether there should be federal standards for product liability insurance, see pp. 5-9.

2. DRAFT A MODEL PRODUCT LIABILITY LAW THAT COULD BE IMPLEMENTED AT THE FEDERAL LEVEL OR UTILIZED BY THE STATES.

There seems little doubt that uncertainities in the area of product liability law have placed a substantial burden on interstate commerce. Assuming that insurers adopted adequate ratemaking practices, the "hodge-podge" of rules in each of [47] the 50 states makes it almost impossible to set rates with any degree of confidence. Most states follow a common law approach, and rules are applied retroactively. In such a climate, insurers must be very conservative in setting their rates.

It seems very unlikely that uncertainties will be removed by individual state action: current state activity in the area is more likely to fuel uncertainty, limit consumer rights, and have little effect on product liability rates.

There was a time when it was well and proper for tort law to remain uncertain: concepts of "wrongness" were sufficiently clear that tort rules did not have to be spelled out in black letter. [16] In the area of product liability, that time appears to have passed. Commercial necessity requires uniformity at least in key areas such as the length of time a manufacturer is responsible for his product, the relevance of a product user's conduct with respect to tort awards, and punitive damages. It is essential that a uniform proposal carefully balance the interests of product users and sellers with regard to those and other key issues. The Task Force study provides an ample predicate for the development of a well-balanced uniform product liability law with respect to those key issues. (See Tab B).

[16] A capsule history of federal involvement in state tort law is set forth in Tab A.

The Department recommends that the project be undertaken with the presumption that the Administration will recommend the bill to Congress. Nevertheless, it suggests that the Administration withhold a firm commitment at this time as to whether the draft law will be submitted to Congress or merely used as a model for state legislatures that have an interest in the product liability problem.

The Department believes that this initiative could be undertaken and completed within 12 months.

3. DRAFT LEGISLATION FOR FEDERAL STANDARDS IN THE AREA OF WORKER COMPENSATION SHOULD INCLUDE A PROVISION THAT WOULD RENDER WORKER COMPENSATION A SOLE SOURCE OF MONETARY RECOVERY FOR WORKERS INJURED IN PRODUCT-RELATED ACCIDENTS.

Most, but not all, serious product liability problems have impacted the manufacturers of workplace products. While workplace accidents represent only 11 percent of product liability claims, they constitute 42 percent of all product [48] liability bodily injury payments made. Under the laws of most states, a manufacturer of a workplace product that proves to be defective must absorb the entire cost of a worker's tort claim—even though the employer may have been substantially at fault in bringing about the accident.

The manufacturer's burden could be relieved by modifying the tort system rules relating to contribution or subrogation. These approaches were explored by the Task Force and also will be considered in the development of a uniform product liability law. Nevertheless, they do not represent the best resolution of the product-workplace injury problem. Neither approach reduces the ultimate amount paid in product liability workplace injury cases. Also, modification of contribution rules can aggravate the problem by increasing transaction costs and imposing new tort claim burdens on employers.

The fact that the Department of Labor is presently developing federal Worker Compensation standards provides an ideal climate for resolving the workplace product liability problem. In that context, most workers would probably receive increased benefits for injuries suffered in the course of employment. While the Department withholds judgment about the nature and extent of those benefits, the fact that they will be enhanced can be a predicate for workers forgoing their right to sue product manufacturers. Federal standards can also incorporate a means whereby product manufacturers contribute (through a post-accident arbitration proceeding) to the worker's compensation award when the injury arose because of a defective product. The approach has the potential of balancing the interests of manufacturers, employers, and workers while reducing transaction costs associated with the tort-litigation system.

The Department of Commerce can work with the Department of Labor in developing this remedy. To some extent, the time frame for completion of the project will be dependent on the Department of Labor's progress with respect to the entire topic of federal Worker Compensation standards. Nevertheless, it is the Department's judgment that the remedy itself can be formulated within a six-month period of time. For the pros and cons relating to this remedy, see pp. 20-23.

4. A STUDY SHOULD BE CONDUCTED TO DETERMINE WHETHER A PRACTICAL NO-FAULT PRODUCT LIABILITY SYSTEM CAN BE DEVELOPED, IN WHOLE OR IN PART, FOR CONSUMER PRODUCTS.

The Task Force analyzed the application of no-fault compensation systems to the area of product liability and determined that certain major issues must be resolved before such a [49] system could be recommended (see p. 23). No-fault appeared to be a very long-range solution to the product liability problem. However, it is not worth abandoning. First, the system may be a practical one for certain product lines such as pharmaceuticals. Second, assuming that Worker Compensation is ultimately made a sole source of recovery for workplace accidents, there will be an increased need to examine whether a no-fault system could be developed for consumer product injuries. Third, the potential implementation of federal no-fault standards in the area of automobile accident compensation suggests that very close attention should be given to the use of no-fault devices in related areas. Finally, a number of academicians who have studied this area have suggested that the ultimate resolution should be a no-fault compensation system.

There is a surface inconsistency in drafting a uniform product liability law and undertaking a further study of no-fault for product liability; however, the two actions can be harmonized. First, it is unlikely that a no-fault product liability system can be developed for *all* products. Second, if one can be developed, it will take a long period of time to enact (because of the controversial nature of such systems). Thus, drafting a uniform law responds to an immediate need, while a study of no-fault may be deemed sound long-range planning. The study itself could be undertaken and completed within an eight-month period. For the pros and cons relating to this remedy, see p. 23.

5. A PROGRAM SHOULD BE DEVELOPED WHEREBY THE FEDERAL GOVERNMENT MORE EFFECTIVELY DISTRIBUTES PRODUCT RISK INFORMATION TO MANUFACTURERS, DISTRIBUTORS, AND RETAILERS.

At present, a substantial amount of information about product risks is brought to the attention of various agencies within the Federal Government. That information is not necessarily consolidated or shared with manufacturers, distributors, or retailers who deal with products that might be affected by that risk information. The Department believes that a program could be developed whereby the government could more effectively distribute product risk information to manufacturers, distributors, and retailers.

The CPSC is presently seeking additional ways whereby industry and the organized bar might bring product risk information to the attention of the Federal Government. The Department [50] recommends that these efforts be supported with a view toward assisting industry in its efforts toward product liability loss prevention. It is suggested that this program be developed for review within 12 months. For the pros and cons relating to this remedy, see p. 11.

6. DEVELOP A SPECIAL LOAN PROGRAM THAT WOULD PERMIT QUALIFIED SMALL BUSINESSES TO OBTAIN PRODUCT LIABILITY LOSS PREVENTION TECHNICAL ASSISTANCE.

Task Force data suggested that some small businesses are not in an economic position to utilize available technical assistance in the area of product liability loss prevention. While it has been suggested that the government directly provide that technical assistance to such businesses, there does not appear to be the personnel available within the government who have both the time and skill to perform that role. A better approach would be to establish a loan program directed at providing loss prevention technical assistance to small businesses which would otherwise be unable to afford it. It is suggested that this program be developed for review within ten months. For the pros and cons relating to this remedy, see p. 12.

7. LEGISLATION SHOULD BE DRAFTED THAT WOULD PERMIT THE FORMATION OF CAPTIVE INSURANCE COMPANIES IN THE AREA OF PRODUCT LIABILITY.

The Department's recommendation with respect to structured self-insurance programs as a potential short-term solution to the product liability problem may be of only limited advantage to some small businesses because they have insufficient capital to wholly self-insure. On the other hand, these businesses might be able to self-insure, in effect, and reduce their product liability insurance costs if state or federal law facilitated the formation of trade association captives. Obviously, federal legislation could indicate the tax consequences regarding such units.

At present, only one state (Colorado) has a law specially addressed to the formation of trade association captives. The Task Force study suggested that numerous improvements could be made in that law. See TFR, pp. VII-161-163.

The utility of captives is closely entwined with income tax consequences relating to when premiums or capital allocations can be deducted from ordinary income. Legislation that would provide for elective federal charters for captives could [51] include considerations of the tax deductibility regarding premium and capital payments to captives as well as antitrust problems. It could also consider how captives would be formed, their minimum capital requirements, and other insurance-related measures.[17] Nevertheless, it is the Department's judgement that it is not necessary to make a final decision at this time as to whether the charters would be issued at the federal level.

Draft legislation of this type could be submitted to the Council of State Governments for use at the state level or used as a basis for minimum federal standards for product liability captives. Draft legislation with explanatory commentary can be prepared within a ten-month period. For the pros and cons regarding chartering captives at the federal level, see pp. 34-35.

8. ADMINISTRATIVE OR LEGISLATIVE GUIDELINES SHOULD BE DEVELOPED THAT WOULD ASSIST PRIVATE INSURERS IN THE FORMATION OF VOLUNTARY INSURANCE POOLS. LEGISLATION THAT WOULD REQUIRE INSURERS TO POOL PRODUCT LIABILITY INSURER RISKS SHOULD NOT BE DEVELOPED AT THIS TIME.

Guidelines that would encourage insurers to form larger risk pools *voluntarily* will have an impact that may reduce or stabilize product liability costs. This remedy is only likely to benefit product lines where risks are homogenous. Moreover, important antitrust considerations and potential unfair competition problems enter in this area. It is therefore essential that the Department of Justice and the Federal Trade Commission assist in the development of these guidelines, which can be developed within a ten-month period.

The Department recommends against developing legislation that would *require* insurers to pool product liability insurance risks. While such legislation might reduce product liability insurance costs for some manufacturers, it would place an unfair burden on manufacturers of low-risk products or manufacturers that followed effective product liability loss prevention techniques. For the pros and cons relating to these remedies, see p. 29.

[52] 9. THE ADMINISTRATION SHOULD ESTABLISH AN INTERAGENCY COUNCIL ON ACCIDENT COMPENSATION. THE COUNCIL WOULD HAVE THE INITIAL RESPONSIBILITY FOR REVIEWING AND COORDINATING FEDERAL INITIATIVES IN THE AREA OF ACCIDENT COMPENSATION.

Problems relating to accident compensation are unlikely to fade away within the next few years—in point of fact, all signs suggest they will grow worse. As indicated on pp. 36-38 of this paper, there is already a multiplicity of federal legislative and research initiatives being undertaken in the area of accident compensation. While the ordinary OMB legislative clearance process meets some problems of coordinating these efforts, there is a clear and present need to have more specialization and analysis on an ongoing basis regarding accident compensation. An Interagency Council composed of agencies that have had substantial experience with respect to problems relating to accident compensation would be a constructive means for meeting this need. The OMB review procedure would not be preempted, only supplemented.

In the event that the Administration regards an Interagency Council as a cumbersome mechanism for achieving the necessary coordination, an office in an individual agency could undertake that function. The office would review all legislative and research initiatives in the area of accident compensation and analyze new problems that arose in that area. The Department will submit a detailed proposal with respect to this option if the Administration prefers it to the alternative option involving the creation of an Interagency Council on Accident Compensation.

The Department recommends that the Interagency Council be formed within the next two months and that it report to OMB and the Domestic Policy Staf on an ongoing basis. For the pros and cons relating to these remedies, see pp. 40-41.

Options Paper on Product Liability and Accident Compensation Issues

DESCRIPTION OF TABS

Tab A Analysis of trend toward increasing involvement by the Federal Government in the area of tort law.

[17] The Department has already received a request regarding the drafting of such a law from the Chairman of the Product Liability Committee of the Missouri Senate.

Tab B A description of major issues that would be addressed in a uniform product liability law.

Tab C Draft Departmental legislative proposal (with section-by-section analysis) that would amend the Internal Revenue Code to permit qualified businesses to set aside a portion of their pretax income to fund a specific reserve for product liability claims.

TAB A ANALYSIS OF TREND TOWARD INCREASING INVOLVEMENT BY THE FEDERAL GOVERNMENT IN THE AREA OF TORT LAW

Historically, tort law has been the province of state as opposed to Federal government; however, this tradition may be changing. Perhaps the first Federal incursion into state tort law occurred in 1906 when Congress passed the first Employers' Liability Act. This legislation attempted to create a Federal tort rule for railroad employees who were injured on the job, but the Supreme Court deemed the act unconstitutional. Congress was more successful in 1908 with the second Employers' Liability Act, which made Federal tort law determinative when a railroad employee, employed in interstate commerce, was injured or killed in the course of employment. This time the Court upheld the statute.

Another example of the Federal government's replacing state tort law with national standards was the enactment by Congress in 1927 of the Longshoremen's and Harbor Workers' Compensation Act. This act established a Worker Compensation system for those workers and prescribed Federal tort rules regarding their claims against shipowners.

More recently, Congress has acted in totally different areas of tort law. In a variety of civil rights acts, Congress included a provision that permits claims for damages due to certain types of discrimination. Congress has also created Federal torts in a number of lesser known areas. For example, the Crime Control and Safe Streets Act, 18 U.S.C. § 2520 (1968), expressly author- ized a civil action against any person who intercepts a telephone conversation. Also, the Consumer Product Safety Act contains a provision creating a Federal tort remedy for persons who are injured as the result of a knowing violation of a safety standard or rule of the Commission. See 15 U.S.C. § 2072 (1972).

Congress has also enacted legislation that compensates tort victims. Among the more important are the Price-Anderson Act (1975), which established a no-fault compensation system for catastrophic incidents that might arise at nuclear power plants, and the National Swine Flu Immunization Program, 42 U.S.C. § 247b (Supp. 1977), which put Federal funds at risk with respect to strict liability tort claims that arose out of that program.

Federal incursions into state tort law have also occurred as a result of the enactment of a pervasive scheme of Federal regulations. For example, Federal regulation of airline transportation affected the law of trespass with respect to landholders' historical rights to exclusive possession of the space about their land. It has also affected the tort of nuisance when the latter is used to protect individuals against aircraft noise. Recently, one court found that extensive Federal regulation (as well as other factors) suggested that a "Federal common law of torts" should apply in litigation that arises from mid-air collisions occurring in national air space. See *Kohr v. Allegheny Airlines, Inc.*, 504 F. 2d 400 (7th Cir. 1974).

Most of the executive branch's incursions into state tort law have begun by way of major Federal studies. Problems in the area of automobile accident compensation led the Department of Transportation to conduct a $2.5 million study of the field. An 18-volume detailed report was published in 1970–1971. This report became the underlying basis for the Federal no-fault automobile compensation system that has been supported by the Administration. If this bill is enacted, it will represent the most significant involvement of the Federal government in the area of state tort law. The minimum standards in the bill will have a major impact on the tort and insurance systems of almost every state.[18]

Problems in regard to the cost and availability of medical malpractice insurance led to the Report of the Secretary's Commission on Medical Malpractice published by the Department of Health, Education, and Welfare in January, 1973. This $1.3 million study contained 20 specific recommendations; however, the Federal government has not implemented them.

In 1970, problems in the area of state Worker Compensation led Congress to create the National Commission on State Workmen's Compensation Laws. Two year later, that group issued a report that suggested that national Worker Compensation standards might be necessary. Subsequently, the executive branch established an Interdepartmental Task Force on Workers' Comensation (chaired by the Department of Labor). To date, that group has issued an interim report that shows that states have not been eager to follow some of the Commission's more important recommendations. See Workers' Compensation: Is There A Better Way?, Report to the President and the Congress of the Policy Group of the Interdepartmental Workers' Compensation Task Force (1/19/77). At present, the Department of Labor is considering the development of national standards for Worker Compensation.

Problems in the areas of cost and availability of product liability insurance led to the Interagency Task Force's study of that topic.

Closely related to the product liability study is the recent HEW consideration of liability problems that arise out of government distribution of vaccines. The HEW report sets forth the pros and cons of a variety of remedies, but does not contain specific recommendations. A representative of the Office of the Secretary of HEW has indicated to this Department that there is a strong interest in Congress regarding specific solutions to the vaccine distribution liability problem. Apparently a number of congresspersons want to avoid the need to pass "emergency" measures in the future.

Very recently, the executive branch has taken a direct interest in the compensation side of tort law. Thus, the Administration has endorsed the Victims of Crime Act of 1977 which would provide grants to the states for payment of compensation to persons injured by certain criminal acts.[19]

Another example is the Office of Federal Procurement Policy's proposed legislation that would provide for interim payments for relief to the public for injuries arising out of conduct by government contractors that have engaged in high-risk activity.

In sum, the Federal government's action in the area of tort law has been "piecemeal"; however, a multiplicity of problems arising out of the traditional tort-litigation system appears to be drawing the Federal government into the area of accident compensation.

TAB B. A DESCRIPTION OF MAJOR ISSUES THAT WOULD BE ADDRESSED IN A UNIFORM PRODUCT LIABILITY LAW

INTRODUCTION

The uniform product liability law proposed in Option 3, page 18, would not purport to be an exhaustive compilation of the entire subject; rather, it would focus on subject matter areas that the Task Force's report suggests have created the most problems and are of major importance.

There are three basic reasons for taking this approach:

- It seems reasonable to impose Federal standards only where it is clearly

[18] Only 16 states have a true no-fault compensation system at this time. Of those states, only three have programs that approach the scope and dimension of the Federal proposal (Michigan, Hawaii, and New York).

[19] Since the criminal acts involved are also torts, the act is, in effect, a tort compensation measure.

necessary to do so. A bill that left the states latitude to fill the interstices of the law would be a more palatable one for legislators who are concerned with the precedential effect of imposing Federal standards in this area.

- It will expedite the drafting of the code. A meaningful attempt to cover the entire range of issues that arise in product liability cases would take many years. The product liability problem is manifest now, and a long period of delay is inadvisable.
- The Final Report itself can serve as a basis for the formulation of these rules. This will save both time and expense. (See Final Report, Chapters II and VII).

It is suggested that the uniform product liability code indicate:

(1) The basic standard of responsibility for manufacturers, retailers, and distributors of products. (For a discussion of this issue, see Final Report, p. VII-15).

(2) How long a manufacturer is responsible for its product. (See FR, p. VII-20).

(3) A manufacturer's responsibility for an unavoidably unsafe product. (See FR, p. VII-29).

(4) The relevance of state of the art. (See FR, p. VII-33).

(5) The relevance of compliance with legislative or administrative standards. (See FR, p. VII-37).

(6) The scope of damage awards for pain and suffering. (See FR, p. VII-64).

(7) The scope of the collateral source rule. (See FR, p. VII-70).

(8) The scope of awards for punitive damages. (See FR, p. VII-75).

(9) The scope of rules relating to contribution and indemnity. (See FR, p. VII-87).

(10) The scope of rules relating to conduct on the part of product users. (See FR, p. VII-46).

The code might also set forth procedures and rules in four additional areas:

(1) Arbitration (see FR, p. VII-229).

(2) Regulation of expert testimony (see FR, p. VII-42).

(3) Sanctions against the bringing of frivolous claims (see FR, p. VII-62).

(4) Situations where hold harmless clauses should be deemed valid under Federal law (see FR, p. V-99).

If the Administration decides to proceed with the drafting of the uniform code, the Department will provide an analysis of the pros and cons relating to whether each or all of these additional areas should be included.

Tab C A Bill

To amend the Internal Revenue Code of 1954 to provide for a deduction for certain amounts paid into a reserve for product liability losses and expenses, to provide a deduction for certain amounts paid to captive insurers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 1. This Act may be cited as the "Product Liability Self-Insurance Act of 1978".

SELF-INSURANCE FOR PRODUCT LIABILITY LOSSES

SEC. 2. Section 165 of the Internal Revenue Code of 1954 (the Code) (relating to losses) is amended by redesignating subsection (i) as (j) and by inserting after subsection (h) the following new subsection:

"(i) *SELF-INSURANCE FOR PRODUCT LIABILITY LOSSES AND EXPENSES.*—

"(1) GENERAL RULE.—In the case of a taxpayer engaged during the taxable year in a trade or business which involves the manufacture, importation, distribution, lease, or sale or a product with respect to which the taxpayer may incur any product liability, at the election of the taxpayer, there shall be allowed as a deduction under subsection (a)—

"(A) Amounts transferred by the taxpayer for such taxable year to his product liability loss reserve account, and

"(B) Amounts paid by the taxpayer for such taxable year to a captive insurer with respect to the product liability of the taxpayer.

"(2) DETERMINATION OF AMOUNT.—

"(A) For a taxpayer which qualifies as having a severe product liability insurance problem (as set forth in paragraph (11) below), the amount of the deduction allowed by paragraph (1) shall not exceed the lesser of—

"(i) Five percent of the gross receipts of the taxpayer for such taxable year from the manufacture, importation, distribution, lease, or sale of such product,

"(ii) the amount which, when added to the sum of the balance of the taxpayer's product liability loss reserve account and the net contributions of the taxpayer to his captive insurer, if any, equals 15 percent of the taxpayer's average yearly gross receipts from the manufacture, importation, distribution, or sale of such product during the base period, or

"(iii) $100,000.

"(B) For a taxpayer who does not qualify as having a severe product liability insurance problem, the amount of the deduction allowed by paragraph (1) shall not exceed the lesser of—

"(i) Two percent of the gross receipts of the taxpayer for such taxable year from the manufacture, importation, distribution, lease, or sale of such product,

"(ii) the amount which, when added to the sum of the balance of the product liability loss reserve account and the net contributions of the taxpayer to his captive insurer, if any, equals 10 percent of the taxpayer's average yearly gross receipts from the manufacture, importation, distribution, lease, or sale of such product during the base period, or

"(iii) $25,000.

"(C) For the purpose of paragraph (2), the term 'base period' shall mean the shorter of:

"(i) the period during which the election under paragraph (1) continuously applies; or

"(ii) the five years ending in the taxable year for which the current deduction is taken.

"(3) DISALLOWANCE OF DEDUCTION FOR CERTAIN LOSSES.—In determining the amount of the deduction allowable for the taxable year under subsection (a), no deduction shall be allowed for any product liability loss paid or incurred by the taxpayer during the taxable year except to the extent that the aggregate amount of such losses during such year exceeds the sum of—

"(A) The amount in the product liability loss reserve account of the taxpayer at the beginning of such taxable year, plus

"(B) The aggregate amount of payments by the taxpayer to such account within the taxable year which are allowable as a deduction under paragraph (1).

"(4) USE OF FUNDS OF ACCOUNT FOR INAPPROPRIATE PURPOSE.—

"(A) *In General.*—If any amount in a product liability loss reserve account is, during a taxable year, used for any purpose which is inconsistent with the provisions of paragraph (9) below—

"(i) an amount equal to the amount so used shall be included as taxable income (without regard to other income or deductions) to the taxpayer for the taxable year in which such use commences, and

"(ii) the liability of the taxpayer for the tax imposed by this chapter for such taxable year shall be increased by an amount equal to 50 percent of the amount so used.

"(B) *Exception.*—Subparagraph (A) shall not apply to amounts paid out of any product liability loss reserve account not later than the last day prescribed by law (including extensions thereof) for filing the taxpayer's return with respect to the tax imposed by this chapter for the taxable year to the extent the amount of such payment is not more than the excess of—

"(i) the aggregate amount of payments by the taxpayer to such account for the taxable year, over

"(ii) the maximum amount of such payments which may be deducted under paragraph (2).

"(5) TIME WHEN PAYMENTS TO ACCOUNT DEEMED MADE.—For the purposes of this subsection, a taxpayer shall be deemed to have made a payment to his product liability loss reserve account on the last day of the preceding taxable year if the payment is made on account of such taxable year and not later than the last day prescribed by law (including extensions thereof) for filing the taxpayer's return with respect to the tax imposed by this chapter for such taxable year.

"(6) PAYMENTS TO ACCOUNT TO BE IN CASH OR CERTAIN OTHER ITEMS.—No deduction shall be allowed under paragraph (1) with respect to any payment to a taxpayer's product liability loss reserve account other than a payment in cash or in items in which the assets in said account may be invested under paragraph (10) below.

"(7) SPECIAL RULE FOR CONTROLLED GROUPS.—

"(A) *In General.*—For the purpose of paragraph (2)—

"(i) In the case of any taxpayer who, during a calendar year, is a component member of a controlled group of corporations, only gross receipts properly attributable under section 482 to such taxpayer for such year shall be taken into account; and

"(ii) the aggregate deductions under this subsection taken by all of the component members of a controlled group of corporations for each taxable year shall be limited to the amount that would be permitted under paragraph (2) if all the component members of such group were condsidered to be a single taxpayer.

"(B) *Definition of Controlled Group.*—For the purpose of subparagraph (A), the term 'controlled group of corporations' has the meaning given such term by paragraphs (1), (2), and (3) of subsection (a) of section 1563, except that the determination of whether a taxpayer is a component member of a controlled group of corporations at any time during a calendar year shall be made on December 31 of such year.

"(C) *Controlled Groups Containing Persons Other Than Corporations.*—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraphs (A) and (B) shall be applied to groups of taxpayers under common control where one or more of such taxpayers is not a corporation.

"(8) ELECTION AND DISSOLUTION OF ACCOUNT.—

"(A) the Secretary shall prescribe by regulations—

"(i) the time and manner in which the election under paragraph (1) shall be made by a taxpayer; and

"(ii) the time, manner, and conditions under which a taxpayer may terminate his product liability loss reserve account, and the funds accumulated therein, if any, may be distributed to the taxpayer without being subject to the penalty described in paragraph (4).

"(B) The regulations prescribed by the Secretary regarding the election under paragraph (1) shall require the taxpayer to indicate whether he is electing to transfer all, or any portion, of the net income earned on amounts previously transferred to his product liability loss reserve account to that account. Net income so earned which the taxpayer does not elect to transfer to his product liability loss reserve account shall be withdrawn from that account without penalty under paragraph (4).

"(9) DEFINITIONS.—For purposes of this subsection—

"(A) *Product Liability.*—The term 'product liability' includes liability for damages arising out of operations after the operation has been completed or abandoned and for damages arising out of physical injuries to persons or property attributable to negligence in, breach of warranty regarding, or defects in a product manufactured, imported, distributed, leased, or sold by the taxpayer.

"(B) *Product Liability Loss.*—The term 'product liability loss' means any loss attributable to the product liability of the taxpayer.

"(C) *Product Liability Loss Reserve Account.*—The term 'product liability loss reserve account' means any trust—

"(i) established in writing which is created or organized under the laws of the United States or of any State (including the District of Columbia) for the taxpayer;

"(ii) the trustee of which is a bank (as defined in section 581) or another person (other than the taxpayer or any component member of a controlled group of corporations, within the meaning of paragraph (7), of which the taxpayer is a component member) who demonstrates to the satisfaction of the Secretary that the manner in which that other person will administer the trust will be consistent with the purposes for which the trust is established;

"(iii) the exclusive purpose of which is to satisfy, in whole or in part, the product liability losses sustained by the taxpayer and the expenses incurred in the investigation, settlement, and opposition of any claims for compensation against the taxpayer with respect to his product liability, and to pay administrative and other incidental expenses of such trust in connection with the operation of the trust and the processing of claims against the taxpayer;

"(iv) the assets of which will not be commingled with any other property other than in a common trust fund and will only be invested as permitted in paragraph (10); and

"(v) the assets of which may not be borrowed, used as security for a loan, or otherwise used by the taxpayer for any purpose other than those described in subparagraph (9) (C) (iii).

"(D) *Captive Insurer.*—The term 'captive insurer' means any insurer wholly- or partially-owned, directly or indirectly, by the taxpayer which is licensed to provide product liability insurance to the taxpayer under the laws of a State of the United States.

"(E) *Net contributions of Taxpayer to Captive Insurer.*—For the purpose of paragraph (2), the term 'net contributions of taxpayer to his captive insurer' shall mean the greater of: (i) the sum of all premiums paid by the taxpayer to his captive insurer for product liability insurance, less all amounts paid by his captive insurer for claims against the taxpayer for compensation with respect to the product liability of the taxpayer, or (ii) zero.

"(10) RESTRICTIONS ON INVESTMENT OF ASSETS.—Investment of the assets of a taxpayer's product liability loss reserve account shall be limited to—

"(A) public debt securities of the United States,

"(B) obligations of a State or local government which are not in default as to principal or interest, or "(C) time or demand deposits in a bank (as defined in section 581) or an insured credit union (as defined in section 107(6) of the Federal Credit Union Act) located in the United States.

"(11) SEVERE PRODUCT LIABILITY INSURANCE PROBLEM.—For the purpose of paragraph (2), a taxpayer shall qualify as having a severe product liability insurance problem for a taxable year if, for such taxable year, either—

"(A) the taxpayer was unable to obtain a premium quotation for product liability insurance, with coverage of up to $1,000,000, from any insurer other than a captive insurer; or

"(B) the lowest insurance premium quotation for product liability insurance, with coverage of up to $1,000,000, obtained by the taxpayer was equal to more than three percent of the gross receipts of the taxpayer for such taxable year.

"(12) DEDUCTIBILITY OF AMOUNTS PAID TO CAPTIVE INSURER AS AN ORDINARY AND NECESSARY BUSINESS EXPENSE.—The deductibility, in whole or in part, of amounts paid by a taxpayer to a captive insurer for product liability insurance coverage under this subsection shall not affect the deductibility of such amounts under Section 162 (relating to ordinary and necessary expenses), except that such amounts shall not be deducted more than once.

"(13) DISCHARGE OF INDEBTEDNESS OF TAXPAYER BY PRODUCT LAIABILITY LOSS RESERVE.—For the purpose of Section 61 (relating to gross income), the payment by the trustee of a taxpayer's product liability loss reserve account of product liability losses sustained by the taxpayer, expenses incurred in the investigation, settlement, and opposition of any claims for compensation against the taxpayer with respect to his product liability, or other expenses permitted to be paid by the trustee of such account under subsection 165(i)(9), shall not be included in the gross income of the taxpayer.

ACCUMULATED EARNINGS TAX

SEC. 3. Section 537 of the Code (relating to the accumulated earnings tax) is amended by redesignating paragraph (b)(4) as (b)(5) and by inserting after paragraph (b)(3) the following new paragraph:

"(b)(4) Amounts accumulated in a taxpayer's product liability loss reserve account and amounts paid by a taxpayer to his captive insurer for liability insurance shall be treated as amounts accumulated for the reasonably anticipated needs of the business of the taxpayer to the extent those amounts are deductible pursuant to Section 165(i). Amounts so accumulated or paid which are not deductible pursuant to Section 165(i) remain subject to the burden of proof set forth in Section 534.

SEC. 4. The amendments made by this Act apply to taxable years beginning after December 31, 1977.

PROPOSED PRODUCT LIABILITY SELF-INSURANCE ACT OF 1978—Section-by-Section Analysis of the Bill

TITLE

Section 1 of the bill provides that it may be cited as the "Product Liability Self-Insurance Act of 1978."

DEDUCTIONS FOR RESERVES FOR SELF-INSURANCE OF PRODUCT LIABILITY LOSSES

Section 2 of the proposed bill sets forth a new subsection (i) of Section 165 of the Internal Revenue Code of 1954 (the Code), which relates to deductions for losses.

Paragraph (1)—Deductibility

Paragraph (1) of Subsection 165(i) would permit a taxpayer engaged in the manufacture, importation, distribution, lease, or sale of a product with respect to which a taxpayer may incur product liability to deduct: (1) amounts transferred by the taxpayer to his product liability loss reserve account, and (2) amounts paid to a captive insurer for insurance coverage of the taxpayer's product liability. Limitations on the amount of the deductions are set forth in Paragraph (2).

Subsection 165(i) is a tax deferral mechanism. It would permit a taxpayer to take a current deduction for the above-described amounts—rather than waiting until the taxable year in which the taxpayer actually incurs (or, in the case of a cash basis taxpayer, pays) product liability losses and expenses related to the investigation, settlement, and opposition of product liability claims.

The purpose of the proposed deduction is threefold. First, it would make product liability insurance more affordable for many insureds. The tax incentives for self-insurance would permit individual firms to increase their deductibles, thereby reducing their insurance premiums. Furthermore, on a macro level, the reduction in aggregate demand for products coverage would presumably lead to lower prices.

Second, the proposed bill would benefit consumers. In that regard, the Final Report of the Interagency Task Force on Product Liability (the Final Report) found that many companies were operating without product liability insurance. This bill would encourage such companies to accumulate a secure pool of funds which would be available to compensate injured consumers who might otherwise go without compensation. Unlike other accounting reserves (*e.g.*, reserve for bad debts), the product liability loss reserve would be comprised of real assets held in trust whose use would be restricted.

Third, in contrast to the bills currently pending in Congress, the proposed bill would encourage the formation of captive insurance companies by permitting the deduction of, at minimum, a portion of the premiums paid by a taxpayer to a captive insurer for product liability coverage. Only amounts paid for product liability coverage, however, would be deductible. Contributions to the capital of a captive, for example, would not be deductible under Paragraph (1).

At present, the law is uncertain as to the deductibility of premiums paid by a taxpayer to its wholly- or partially-owned domestic captive.[20] The proposed bill would assure the deductibility of such premiums, subject to the limitations of Paragraph (2) discussed below. It is not intended, however, that this bill affect the deductibility of such premiums under Section 162 of the Code, relating to the deduction of ordinary and necessary business expenses. Thus, the deductibility of amounts paid to a captive insurer with respect to a taxpayer's product liability under Paragraph (1) is not dependent upon current or future interpretations of the law regarding Section 162 or terms such as "insurance" and "insurance premium." (See discussion of Paragraph (12) below).

Paragraph (2)—Determination of Amount

Paragraph (2) sets forth the limitations on the amount deductible under Section 165(i). It creates a two-tier set of limitations. With respect to taxpayers who have a "severe product liability insurance problem" (as defined in Paragraph (11)), the deduction is limited to the lesser of:

(1) five percent of the gross receipts of the taxpayer from such product or products;

(2) the amount which, when added to the sum of the balance of the taxpayer's product liability loss reserve account and of the net contributions of the taxpayer to his captive insurer, equals fifteen percent of the taxpayer's average yearly gross receipts for such product or products during the base period; or

(3) $100,000.

For taxpayers which do not qualify as having a severe product liability insurance problem, those three benchmarks are set at two percent, ten percent, and $25,000, respectively, and the deduction is limited to the lesser of the three.

The limitations on deductibility set forth in Paragraph (2) provide clear guidelines to taxpayers as to the amount they are permitted to deduct pursuant to Paragraph (1). This clarity and certainty is preferable to the more ambiguous standards used in H.R. 10272 (La Falce) and H.R. 7711 (Whalen). H.R. 10272 limits the deduction to "an amount equal to the fair market value of product liability insurance for such taxpayer for such year." H.R. 7711 limits the deduction to:

"the reasonable cost to the taxpayer (but for such trust) for insurance for such year for the payment of product liability claims and expenses directly related to the investigation and settlement (or opposition) of such claims."

The proposed bill does not limit the deductions under Paragraph (1) to only taxpayers with a severe product liability problem. The two-tier system recognizes the problems of equity and uncertainty inherent in relying solely on the criterion of "severe product liability problem." On the one hand, attempts to quantify that criterion in a definition inevitably will exclude some taxpayers whose product liability situations are severe—thus, the problem

[20] Revenue Ruling No. 77-316 stated the IRS's position that premiums paid to a taxpayer's wholly-owned foreign captive are not deductible. This ruling has not been tested in court, and therefore, it is not binding law. Furthermore, the IRS has not opined as to the applicability of that ruling to domestic captives, whether wholly- or partially-owned.

of equity among taxpayers. On the other hand, reliance on a qualitative, rather than quantitative, definition of that criterion would lead to uncertainty in the application and enforcement of Section 165(i).

The term "base period" is defined to mean the shorter of: the period during which the election under Paragraph (1) continuously applies or the five years ending in the taxable year for which the current deduction is taken.

Finally, as will be discussed in more detail below with regard to Paragraph (3), the limitations are designed to prevent any tax advantage in Section 165(i) from accruing to large companies. Thus, the proposed legislation focuses on smaller companies which, according to the Final Report, are affected most severely by the product liability problem.

Paragraph (3)—Disallowance of Deduction for Certain Losses Pursuant to Subsection 165(a)

Paragraph (3) limits the deduction of losses under Subsection 165(a). It provides that no deduction shall be allowed for any product liability loss paid or incurred by the taxpayer except to the extent that the aggregate amount of those losses during such year exceeds the sum of:

(1) the amount in the taxpayer's product liability loss reserve account at the beginning of the taxable year, plus

(2) the aggregate amount of payments by the taxpayer to such account within the taxable year which are allowable as a deduction under Paragraph (1).

The purpose of this paragraph is twofold. First, it makes it clear that losses cannot be both paid out of funds contributed to a product liability loss reserve account and deducted as a loss under Subsection 165(a). To allow otherwise would permit a double deduction of those losses.

Second, Paragraph (3) interacts with the limitations set forth in Paragraph (2) to limit the tax deferral benefits of Section 165(i) to smaller companies. Companies which incur over $25,000 annually in product liability losses—the maximum amount deductible annually for firms which do not have a severe product liability insurance problem—would not receive any tax deferral benefit from the proposed bill. This is because their losses would be deductible in that year under Section 165(a), regardless of the provisions of Section 165(i). The same phenomenon would apply to companies with a severe product liability insurance problem except that the cutoff point would be $100,000.

Paragraph (4)—Use of Funds of Account for an Inappropriate Purpose

Subparagraph 4(A) sets forth the penalty to be incurred by a taxpayer for using funds in his product liability loss reserve account for a purpose which is inconsistent with the provisions of Paragraph (9) of the bill. The latter paragraph limits the use of the funds to the payment of the product liability losses and expenses of the taxpayer and the administrative and other incidental expenses of the trust.

Subparagraph 4(B) contains an exception to the above rule in recognition of the accounting realities confronted by a taxpayer. In that regard, in most instances a taxpayer does not know the exact amount of his gross receipts for a taxable year on the day that year ends. Instead, the taxpayer must wait until after his post year-end audit is completed. Similarly, his product liability losses and expenses may not be known until that time. Therefore, a taxpayer cannot determine the amount of contributions to his product liability loss reserve account permitted under Paragraph (2) until that audit is completed. This subparagraph allows the taxpayer to remove amounts contributed to his loss reserve account which are above the limitations set forth in Paragraph (2) within the specified period without penalty.

Paragraph (5)—Time When Payments to Account Are Deemed Made

Paragraph (5) allows a taxpayer to make a contribution to his product liability loss reserve account within the same period specified in Paragraph (4) and still have it treated as having been made within the previous taxable year. Again, this is in recognition of the lag between the end of the taxable year and the time when the taxpayer's financial statements are completed. Paragraph (5) would assure taxpayers of the opportunity to contribute the maximum amount permitted under Paragraph (2) to their product liability loss reserve accounts.

Paragraph (6)—Payments to Account to be in Cash or Certain Other Items

Paragraph (6) limits deductions under Paragraph (1) with respect to a taxpayer's product liability loss reserve account to contributions of cash or the other items in which the funds of said account may be invested under Paragraph (10). The purpose of this paragraph is to eliminate the tax incentive for contributions of property which would not be readily available for compensating injured consumers.

Paragraph (7)—Special Rule for Controlled Groups

Subparagraph (7)(A) provides that, with respect to any taxpayer which is a component member of a controlled group of corporations, only gross receipts properly attributable to such taxpayer under Section 482 of the code shall be taken into account for the purpose of determining the maximum annual deduction under Paragraph (2). The objective of this provision is to ensure that gross receipts for products (or services) which would not qualify directly for a deduction under Paragraph (1) are not included indirectly in the computation of the maximum limit under Paragraph (2).

Subparagraph (7)(A) also limits the aggregate deductions under Subsection 165(i) taken by all of the component members of a controlled group of corporations to that which would be permitted under Paragraph (2) if that controlled group consisted of a single corporation. This prevents any additional tax benefit from accruing to firms which have divided their businesses into subcomponent firms, as compared to firms which have not done so.

This limitation is consistent with other provisions of the Code. For example, Section 1561 limits component members of a controlled group of corporations to one surtax exemption under Section 11(d) of the Code and a single accumulated earnings tax credit of $150,000 under Section 535(c)(2) of the Code.

Subparagraph (7)(B) defines the term "controlled group of corporations" by reference to paragraphs (1), (2), and (3) of Section 1563 of the Code with one modification. It provides that the determination of whether a taxpayer is a component member of such a controlled group during a calendar year shall be made on December 31 of such year.

Subparagraph (7)(C) provides for the application of principles similar to those set forth in Subparagraphs (7)(A) and (7)(B) to groups of taxpayers under common control where one or more of the taxpayers is not a corporation.

Paragraph (8)—Election and Dissolution of Account

Subparagraph (8)(A) directs the Secretary of the Treasury to prescribe by regulation the time and manner in which the election by a taxpayer under Paragraph (1) shall be made. Furthermore, the Secretary is directed to prescribe the time, manner, and conditions under which a taxpayer may terminate his product liability loss reserve account and distribute the funds accumulated therein without being subject to the penalty described in Paragraph (4). The regulations promulgated by the Secretary in this regard will determine, in part, the extent to which product liability loss reserve accounts will serve as a tax deferral and shelter device. The ability of taxpayers to accumulate substantial amounts of tax-free dollars in such accounts and to distribute them without penalty upon dissolution of the com-

pany, for example, could make product liability loss reserve accounts an attractive alternative to qualified pension and profit-sharing plans (Section 401 *et seq.* of the Code).

Regarding the election under Paragraph (1), Subparagraph (8)(B) directs the Secretary to prescribe regulations requiring a taxpayer to indicate whether he is electing to transfer all, or any portion, of the net income earned on funds in his product liability loss reserve account to that account. Net income which the taxpayer does not elect to so transfer must be withdrawn, but without penalty under Paragraph (4).

The purpose of this subparagraph is to clarify the status of net income earned on the assets of a taxpayer's product liability loss reserve account under Subsection 165(i). Unless a taxpayer elects to contribute that net income to his product liability loss reserve account, it will not be considered part of that account and must be withdrawn. His election to transfer the net income earned to that account, however, is subject to the limitations on annual contributions set forth in Paragraph (2). Thus, the limitations on the maximum size of product liability loss reserve accounts are made effective.

The election procedure gives the taxpayer the option of transferring the net income earned on account assets, rather than providing for an automatic transfer. Furthermore, by requiring the withdrawal of net income which is not contributed, accounting procedures are simplified. Thus, all funds in a taxpayer's product liability loss reserve account will have been deducted upon their transfer and will be subject to the various restrictions set forth in Subsection 165(i). The mandatory withdrawal, however, does not prevent a taxpayer from maintaining the withdrawn funds in a separate account for self-insurance for product liability. Those funds simply are not deductible under Subsection 165(i).

The term "net income" is used to make it clear that the taxpayer may offset investment losses against gains.

Paragraph (9)—Definitions

Paragraph (9) defines certain terms used in the bill. "Product liability" is defined to mean liability for damages arising out of operations after the operation has been completed or abandoned and for damages arising out of negligence in, breach of warranty regarding, or defects in a product manufactured, imported, distributed, leased, or sold by the taxpayer. The term is limited to damages arising out of physical injuries to persons or property and would not encompass loss of profits.

"Product liability loss" is defined broadly to mean any "loss attributable to the product liability of the taxpayer."

"Product liability loss reserve account" is defined as any trust created under the laws of the United States or any state (including the District of Columbia), the trustee of which is a bank or other person approved by the Secretary. The exclusive purpose of such trusts is limited to the satisfaction of the product liability losses and expenses incurred by the taxpayer in the investigation, settlement and opposition of any product liability claims against the taxpayer, and the payment of the administrative and other incidental expenses of the trust. The term is further defined so as to preclude the indirect use of the assets of the trust by the taxpayer for purposes other than those described above. Trust assets may not be borrowed, used as security for a loan or otherwise used by the taxpayer for any purpose other than those set forth in Subparagraph (9)(C)(iii); nor may the assets be commingled with any other property other than in a common trust fund or invested, except as permitted in Paragraph (10).

"Captive insurer" is defined by any insurer wholly- or partially-owned by the taxpayer, directly or indirectly, which is licensed to provide product liability insurance to the taxpayer under the laws of a State of the United States. Deductions, therefore, would not be permitted for premiums paid to so-called "offshore" captive insurers under Paragraph (1).

"Net contributions of taxpayer to his captive insurer" is defined to mean the greater of: (i) the aggregate premiums paid by the taxpayer to his captive insurer for products coverage, less all amounts paid by his captive insurer for product liability claims against the taxpayer, or (ii) zero. The purpose of this definition is to treat payments to captive insurers in a similar fashion as contributions to product liability loss reserve accounts for the purpose of Paragraph (2). In that regard, the formula used prevents a negative number from arising as a result of large claim payments by the captive insurer.

Paragraph (10)—Restrictions on Investment of Assets

In order to assure that funds are available to compensate injured consumers, investment of the assets of a taxpayer's product liability loss reserve account is limited to certain low-risk and highly liquid assets. These assets are: (1) public debt securities of the United States, (2) obligations of a State or local government which are not in default as to principal or interest, and (3) time or demand deposits in a bank or an insured federal credit union located in the United States.

Paragraph (11)—Severe Product Liability Insurance Problem

Paragraph (11) sets forth the criteria for determining whether a taxpayer has a severe product liability insurance problem for the purpose of Paragraph (2). In order to qualify, either the taxpayer must have been unable to obtain a premium quotation for product liability insurance, with coverage of up to $1,000,000, from any insurer other than a captive insurer, or the taxpayer must have been unable to obtain a premium quotation for such coverage equal to three percent or less of the gross receipts of the taxpayer for such taxable year. These two criteria attempt to quantify, albeit arbitrarily, the unavailability and unaffordability parameters, respectively, of product liability. The inability of the taxpayer to obtain a premium quotation for product liability insurance coverage greater than $1,000,000 at any cost, or at a cost of more than three percent of the gross receipts of the taxpayer, would not qualify as a severe product liability insurance problem.

Paragraph (12)—Deductibility of Amounts Paid to Captive Insurers as an Ordinary and Necessary Business Expense

As has been discussed above with respect to Paragraph (1), at prsent, the law is uncertain regarding the deductibility of premiums paid to captive insurance companies under Section 162 of the Code. The purpose of Paragraph (12) is to clarify that the proposed bill—by establishing a partial deduction for premiums paid to captive insurers—is not intended to affect the deductibility of such premiums under that section. Of course, double deductions of the same loss or expense are not permitted.

Paragraph (13)—Discharge of Indebtedness of Taxpayer by Product Liability Loss Reserve

Paragraph (13) of the proposed bill provides that the payment by the trustee of a taxpayer's product liability loss reserve account of product liability losses sustained by a taxpayer, expenses incurred in the investigation, settlement, and opposition of any product liability claims against the taxpayer, or other expenses as permitted under Section 165(i)(9), shall not be included in the gross income of the taxpayer. The purpose of this paragraph is to prevent the discharge of these legal obligations of the taxpayer by the trustee from being considered income to the taxpayer under Section 61 of the Code. If that were the case, the deduction created by the proposed bill would be offset by income to the taxpayer.

ACCUMULATED EARNINGS TAX

Section 3 amends Section 537 of the Code by inserting a new paragraph

(b)(4) which would treat amounts accumulated in a taxpayer's product liability loss reserve account and amounts paid by a taxpayer to a captive insurer as funds accumulated for the reasonably anticipated needs of a business, to the extent those amounts are deductible pursuant to Section 165(i). This means that those amounts would not be subject to the accumulated earnings tax. Other amounts so accumulated or paid remain subject to the burden of proof set forth in Section 534 of the Code and may be subject to that tax.

EFFECTIVE DATE

Section 4 makes the amendments made by this bill applicable to taxable years beginning after December 31, 1977.

[FR Doc. 78-9059 Filed 4-5-78; 8:45 am]

federal register

THURSDAY, APRIL 6, 1978
PART IV



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institute of Education

■

EDUCATIONAL EQUITY RESEARCH GRANTS PROGRAM

[4110-39]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institute of Education

[45 CFR Part 1490]

EDUCATIONAL EQUITY RESEARCH GRANTS PROGRAM

Establishment of Requirements, Procedures, and Funding Criteria

AGENCY: National Institute of Education (NIE), Department of Health, Education, and Welfare.

ACTION: Proposed rulemaking.

SUMMARY: The Director proposes the adoption of new regulations that will establish the requirements, procedures, and funding criteria for an Educational Equity Research Grants Program. The results of the knowledge gained from this research should enable practitioners and decision makers to make the educational system more effective for all American students and adults, especially for those who (1) are participating in the process of school desegregation; (2) have limited or no knowledge of English; (3) have not received equal educational opportunities due to ethnic or racial minority membership; (4) are restricted by sex-role stereotypes.

DATES: Comments must be received on or before May 8, 1978.

ADDRESS: Comments should be sent to the Regulations Officer, Office of Administration and Management, National Institute of Education, Room 639-B, 1200 19th Street NW., Washington, D.C. 20208.

FOR FURTHER INFORMATION CONTACT:

Martin O. Milrod, Plans and Operations, Educational Equity Group, National Institute of Education, Washington, D.C. 20208, 202-254-5170.

SUPPLEMENTARY INFORMATION: As a priority research area of the Institute, the Educational Equity Program focuses on educational problems faced at all levels by substantial numbers of children and adults who are not well served by the nation's public schools. NIE plans to sponsor annual research grants competitions in this area.

A great deal of consultation with scholars, educational leaders, teachers, special-interest organizations, researchers, and other Federal agency staffs has been, and will continue to be, undertaken in reviewing the plans and proposed plans of the Educational Equity Grants Program. The Director will consider those research and development projects that will produce further knowledge toward achieving the goal of educational equity involving (1) educational equity theories; (2) desegregation; (3) multicultural/bilingual education; (4) barriers to women's educational equity.

It is anticipated that approximately $1 million in FY 1978 will be available for grants in this program with about 40-50 awards to be made in an average award range of $20,000 to $25,000. Peer review of grant proposals will be made, including non-NIE reviewers at the Director's discretion. The Director reserves the right to fund only fully qualified proposals within the financial resources and staff support capabilities of the Institute. Nothing in this notice, subsequent notices of closing dates, or program announcements should be construed as committing NIE to award any specified total amount or to make awards in all research areas.

General Provisions of the NIE for Research and Development Grants are published at 45 CFR Parts 1400-1424. Section 1400.2(b) provides that the General Provisions may be supplemented by special substantive and procedural rules and policies for particular grants programs. This notice of proposed rulemaking is issued in accordance with that provision.

All comments received in response to this notice will be available for public inspection in the office of the Regulations Officer between 8 a.m. and 4:30 p.m., Monday through Friday.

Application forms and additional information may be obtained from the Educational Equity Group, National Institute of Education, 1200 19th Street, NW., Washington, D.C. 20208.

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

(Catalog of Federal Domestic Assistance Program No. 13.950, Education Research and Development.)

Dated: February 10, 1978.

PATRICIA ALBJERG GRAHAM,
Director, National Institute of Education.

Approved: March 29, 1978.

Joseph A. Califano, Jr.,
Secretary of Health, Education, and Welfare.

Title 45 of the Code of Federal Regulations is proposed to be amended by adding to Subchapter B of Chapter XIV, a new Part 1490 reading as follows:

PART 1490—EDUCATIONAL EQUITY RESEARCH GRANTS PROGRAM

Sec.
1490.1 Scope.
1490.2 Purpose.
1490.3 [Reserved]
1490.4 Applicant eligibility.
1490.5 Eligible projects.
1490.6 Ineligible projects.
1490.7 Application requirements.
1490.8 Review of applications.
1490.9 Project duration.

AUTHORITY: Sec. 405, General Education Provisions Act, as amended (20 U.S.C. 1221e).

§ 1490.1 Scope.

(a) This part establishes procedures, substantive requirements, and criteria governing the submission and review of applications for funds under the Educational Equity Research Grants Program.

(b) Each grant under this program is subject to applicable provisions of Subchapter A of this chapter (General Provisions for National Institute of Education (NIE) grants relating to fiscal, administrative, and other matters) (45 CFR Parts 1400-1424), except to the extent that such provisions are inconsistent with, or expressly made inapplicable by, the provisions of this part.

§ 1490.2 Purpose.

The purpose of the Educational Equity Research Grants Program is to further the goal of educational equity by supporting research and development studies in the substantive areas described in § 1490.5.

It is intended that each award will produce knowledge to help determine how every person can best achieve an education of high quality regardless of race, color, religion, sex, national origin, or social class.

§ 1490.3 [Reserved]

§ 1490.4 Applicant eligibility.

(a) Colleges, universities, State and local educational agencies, other public or private agencies, organizations and groups, and individuals are eligible to apply.

(b) Applications from for-profit organizations must be submitted in accordance with criteria specified in this part and in Department of Health, Education, and Welfare (HEW) Procurement Regulations, Subpart 3-4.52 (41 CFR Part 3-4), and, if successful, are awarded contracts rather than grants.

§ 1490.5 Eligible projects.

(a) *Eligible research and development areas.* An application under this part must propose research or development in no more than one of the following substantives areas:

(1) *Educational equity theories.* This area includes research to develop better educational opportunity theories (including different definitions of equity and ways in which they are applied and with what results). These theories foster the kinds of analyses

leading to public policies aimed at reducing the barriers faced by women and minorities in achieving equality of educational opportunity.

(2) *Desegregation.* This area includes any aspect of desegregation efforts, such as exemplary methods of educating students in desegregated settings.

(3) *Multicultural/bilingual education.* This area includes:

(i) Educational problems of students (A) who do not speak English, or have limited English speaking ability; (B) who speak non-standard English; or (C) whose culture differs significantly from the majority of students in the United States, or

(ii) How all children may improve their educational opportunities through multicultural/bilingual education.

(4) *Barriers to women's educational equity.* This area includes any aspect of educational research concerning barriers to educational equity for women, such as, the problems related to sex-role stereotyping and discrimination, the special problems minority women face in obtaining equal educational opportunities and leadership positions, and the particular social and educational processes contributing to inequities and ways to eliminate such problems.

(b) *Eligible research processes.* Projects that involve research or development in one of the selected areas described in paragraph (a) of this section may be carried out using any research or development process other than those specified in § 1490.6.

(c) *Selection of areas to be funded.* In the announcement of a closing date for each research grants competition conducted under this program, the director shall indicate which of the areas described in paragraph (a) of this section will be included in that competition.

§ 1490.6 Ineligible projects.

A project whose primary purpose is the operation, development or demonstration of specific programs or materials is not eligible for support under this part. Examples of ineligible projects include:

(a) Operation of an educational program;

(b) Improvement of an educational program through the implementation of a new or improved instructional, administrative, or managerial procedure, technique, material, training, or piece of equipment;

(c) Course development through the production of a new curriculum, or the improvement of an existing curriculum, including the preparation of new instructional material or the modification of instructional material already in existence;

(d) Development or adaptation in an operational setting of any new or improved instructional, administrative, or managerial procedure, technique, material, training, or piece of equipment;

(e) A demonstration project which shows, exhibits, describes, or explains to others, either in person or through various other communication media, the procedure, technique, and/or material which must be employed in the execution of a new or modified instructional task, educational program, or administrative or management process.

§ 1490.7 Application requirements.

An applicant shall submit an application in the form and in such detail as the Director shall require.

§ 1490.8 Review of applications.

(a) *Substantive areas.* In each research grants competition announced under this program, each application will be evaluated in competition with other applications submitted in the same substantive area. The Director will seek to distribute awards equitably among the substantive areas selected in accordance with § 1490.5(c).

(b) *Criteria for evaluation.* Evaluation of applications will be based upon the following criteria:

(1) Evidence of sensitivity to and awareness of minority and women's concerns as shown by efforts to provide equal employment opportunities, or other exemplary projects.

(2) Significance of the proposal to educational equity and the likelihood of significantly increasing the knowledge base if the project is successful.

(3) Technical quality of the proposal, based upon:

(i) The quality of the research design, methodology, and where appropriate, instrumentation;

(ii) The extent to which the proposal exhibits thorough knowledge of pertinent previous work; and

(iii) The quality of the research evaluation design and the dissemination plan.

(4) Organizational and staff qualifications, based upon:

(i) The experience, previous research, and background of the principal investigator(s);

(ii) The adequacy of facilities and arrangements available for the project, including evidence of access to necessary organizations, groups, and individuals for study or research purposes; and

(iii) The willingness of study populations to participate in the research proposal, as appropriate.

(5) Probability of successful completion of the project, based upon:

(i) The overall balance of tasks to be performed and the adequacy of resources to perform these tasks, including budgetary, personnel, and design considerations;

(ii) The estimated cost of the project in relationship to the anticipated results.

(c) *Inapplicable criteria.* Evaluation criteria set forth in § 1403.10 of this chapter shall not apply to applications submitted under this part.

§ 1490.9 Project duration.

Funded projects normally will not exceed 12 months in duration.

[FR Doc. 78-9164 Filed 4-5-78; 8:45 am]

[4110-39]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institute of Education

EDUCATIONAL EQUITY RESEARCH GRANTS PROGRAM

Closing Date for Receipt of Applications

Notice is hereby given that pursuant to the authority contained in section 405 of the General Education Provisions Act, as amended, 20 U.S.C. 1221e, applications are being accepted for grants under the Educational Equity Research Grants Program. An individual, a college, university, State department of education, local educational agency, other public or private agency, organization or group, or any combination of these is an eligible applicant. Projects will be considered in the education areas of educational equity theories, desegregation, multicultural/bilingual, and women's research. Project awards may be for up to a twelve (12) month period of performance.

The program has a funding allocation of $1.0 million in fiscal year 1978. It is expected that there will be about 40-50 project awards.

Closing date: May 31, 1978.

A. *Applications sent by mail.* An application sent by mail should be addressed as follows: National Institute of Education, Proposal Clearinghouse, Washington, D.C. 20208, Attention: NIE PA 780001. An application sent by mail will be considered to be received on time by the Clearinghouse if:

(1) It is received at the Clearinghouse by 5 p.m., May 31, 1978; or

(2) The application was sent by registered or certified mail not later than 5 p.m. on May 24, 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.

B. *Hand-delivered applications.* An application to be hand-delivered must be brought to the Proposal Clearinghouse, Room 708, 1832 M Street NW., Washington, D.C. Hand-delivered applications will be accepted daily between the hours of 9 a.m. and 5 p.m., Washington, D.C. time, except Saturdays, Sundays and Federal holidays. Hand-delivered applications will not be accepted after 5 p.m. on the closing date May 31, 1978. A receipt will be issued upon acceptance of the application package.

C. *Application forms and program information.* Program announcements with application materials may be obtained from the Educational Equity Group, National Institute of Education, Room 833, 1200 19th Street NW., Washington, D.C. 20208, telephone 202-254-5170.

D. *Applicable regulations.* The regulations applicable to this Program include the National Institute of Education General Provisions Regulations (45 CFR Subchapter A Part 1400) published in the FEDERAL REGISTER on November 4, 1974, 39 FR 38992, and regulations for the Educational Equity Research Grants Program which are published in proposed form in this issue of the FEDERAL REGISTER.

(Catalog of Federal Domestic Assistance No. 13.950, Educational Research and Development.)

Dated: Feburary 14, 1978.

PATRICIA ALBJERG GRAHAM,
Director, National Institute of Education.

[FR Doc. 78-9165 Filed 4-5-78; 8:45 am]