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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

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

Expenses, Rate of Assessment, and Carryover of Unexpended Funds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document authorizes expenses and a rate of assessment for the 1977-78 fiscal period, to be collected from handlers to support activities of the Valencia Orange Administrative Committee which locally administers the Federal marketing order covering Valencia oranges grown in Arizona and designated part of California.

DATES: November 1, 1977, through October 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: On April 18, 1978, notice was published in the FEDERAL REGISTER (43 FR 16346) inviting written comments not later than May 1, 1978, on proposed expenses, rate of assessment, and carryover of unexpended funds under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. None were received. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

After consideration of all relevant matter presented, including the proposals in the notice, it is found that:

§ 908.217 Expenses, rate of assessment, and carryover of unexpended funds.

(a) Expenses that are reasonable and likely to be incurred by the Valencia Orange Administrative Committee during the period November 1, 1977, through October 31, 1978, will amount to $356,040.

(b) The rate of assessment for said period payable by each handler in accordance with § 908.41 is fixed at $0.0145 per carton of oranges.

(c) Unexpended assessment funds in excess of expenses incurred during the fiscal period ended October 31, 1977, shall be carried over as a reserve in accordance with § 908.42.

It is further found that good cause exists for not postponing the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) as the order requires that the rate of assessment for a fiscal period shall apply to all assessable Valencia oranges handled from the beginning of the period.

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

Dated: May 2, 1978.

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

[FR Doc. 78-12434 Filed 5-5-78; 8:45 am]

[6210-01]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Regs. D and Q; Docket No. R-0157]

PART 204—RESERVES OF MEMBER BANKS

PART 217—INTEREST ON DEPOSITS

Investment of U.S. Treasury Funds

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System has amended Regulation D and Regulation Q to exempt from deposit treatment a member bank's liability on its promissory note that evidences an investment of funds by the United States Treasury. Consequently, these liabilities of member banks will not be subject to the reserve requirements and interest rate limitations imposed on member bank deposits.

EFFECTIVE DATE: July 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Allen L. Raiken, Associate General Counsel, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3625.

SUPPLEMENTARY INFORMATION: Regulations D and Q provide, in part, that a member bank's liability on its promissory note will not be considered a "deposit" of the member bank if the note is issued to a domestic banking office of another bank, an agency of the United States, or the Government Development Bank of Puerto Rico. Under the amendments adopted today, a note issued by a member bank to evidence an investment of funds by the United States Treasury will also be exempt from deposit treatment.

This action is taken in recognition of Pub. L. 95-147, which authorizes the Secretary of the Treasury to invest operating cash in obligations of depositaries maintaining Treasury tax and loan accounts. The Board of Governors believes that Congress intended that these member bank obligations be exempt from reserve requirements and interest rate limitations. Accordingly, the amendments approved today will promote Congress' purpose in enacting this legislation to provide Treasury with a direct means of obtaining interest on its cash balances. The Treasury has issued rules regarding implementation of this legislation and it is intended that the Board's rules and the Treasury's rules take effect simultaneously on July 6, 1978.

It should be noted that these amendments do not affect the status of Treasury tax and loan accounts as demand deposit accounts. Funds placed in these accounts at member banks will retain their status as demand deposits until such time as they are remitted to the Treasury or until they are invested by Treasury in obligations of the depositaries pursuant to the rules adopted by Treasury. Until such time, member banks will be required to maintain reserves against the Treasury tax and loan demand deposits.

Because these amendments implement legislation enacted by Congress

and augment rules published by Treasury, the Board believes that significant public benefits will immediately result from their adoption. The immediate adoption of the final rules will remove uncertainty concerning the deposit status of promissory notes issued to Treasury by member banks, and thus will permit banks to begin preparing immediately for participation in the Treasury program. Consequently, the Board has determined that notice and public participation with respect to these amendments is unnecessary and would be contrary to the public interest.

Pursuant to section 19(a) of the Federal Reserve Act (12 U.S.C. 461), effective July 6, 1978, § 204.1(f) of Regulation D (12 CFR 204) and § 217.1(f) of Regulation Q (12 CFR 217) are amended to read as follows:

§ 204.1 Definitions.

* * * * *

(f) *Deposits as including certain promissory notes and other obligations.* For the purposes of this Part, the term "deposits" also includes a member bank's liability on any promissory note, acknowledgment of advance, due bill, banker's acceptance, or similar obligation (written or oral) that is issued or undertaken by a member bank as a means of obtaining funds to be used in its banking business, except any such obligation that:

(1) Is issued to (or undertaken with respect to) and held for the account of (i) a domestic banking office[6] of another bank, or (ii) the United States or an agency thereof, or the Government Development Bank for Puerto Rico;

* * * * *

§ 217.1 Definitions.

* * * * *

(f) *Deposits as including certain promissory notes and other obligations.* For the purposes of this Part, the term "deposits" also includes any member bank's liability on any promissory note, acknowledgment of advance, due bill, or similar obligation (written or oral) that is issued or undertaken by a member bank principally as a means of obtaining funds to be used in its banking business, except any such obligation that:

(1) Is issued to (or undertaken with respect to) and held for the account of (i) a bank or an institution the time deposits of which are exempt from § 217.7 pursuant to § 217.3(g), or (ii) the United States or an agency thereof, or the Government Development Bank for Puerto Rico;

* * * * *

Board of Governors of the Federal Reserve System, April 28, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-12415 Filed 5-5-78; 8:45 am]

[6210-01]

[Regs. B and Z; Docket No. R-0154]

PART 226—TRUTH IN LENDING

Amendment to Procedures for Issuing Official Staff Interpretations; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Correction.

SUMMARY: This document corrects a previous FEDERAL REGISTER document.

FOR FURTHER INFORMATION CONTACT:

Anne Geary, Chief Staff Attorney; Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3761.

In FR Doc. 78-11758 appearing at page 18540 of the issue for Monday, May 1, 1978, § 226.1(d)(2)(i) should have read:

* * * * *

(d) * * *

"(2)(i) Official staff interpretations will be issued at the discretion of designated officials. No such interpretation will be issued approving creditors' forms or statements. Any request for an official staff interpretation of this Part must be in writing and addressed to the Director of the Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request must contain a complete statement of all relevant facts concerning the credit transaction or arrangement and must include copies of all pertinent documents."

Board of Governors of the Federal Reserve System, May 1, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-12402 Filed 5-5-78; 8:45 am]

[4910-13]

Title 14—Aeronautics and Space

CHAPTER 1—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 78-NW-11-AD; Amdt. 39-3209]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 747

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Airworthiness Directive (AD) requires inspection of the cabin floor support structure of Boeing Model B-747 airplanes in the vicinity of the main landing wheel wells, and repair if necessary. Several instances of cracks in floor beams and one crack in the lower pressure deck have been reported. Cracked floor structure could result in loss of cabin pressurization.

DATE: Effective date: May 16, 1978.

ADDRESSES: Boeing service bulletins specified in this directive may be obtained upon request to Boeing Commercial Airplane Co., P.O. Box 3707, Seattle, Wash. 98124. These documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Wash. 98108.

FOR FURTHER INFORMATION, CONTACT:

Iven Connally, Airframe Section ANW-212, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Wash. 98108, telepone 206-767-2516.

SUPPLEMENTARY INFORMATION: Operators have reported several instances of floor-beam cracks between fuselage stations 1265 and 1480 on Boeing Model B-747 airplanes. In one case, the floor beam had failed through the lower caps, resulting in a 5-inch-long crack in the lower pressure deck. Failure of the floor support structure could result in cabin depressurization and/or failure of passenger seat tracks. This AD is issued to prevent floor support failures which could result in those consequences.

DRAFTING INFORMATION

The principal authors of this document are Iven Connally, Engineering and Manufacturing Branch, and Richard Salwen, Acting Regional Counsel, Northwest Region.

Since a situation exists that requires 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.

ADOPTION OF THE AMENDMENT

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

BOEING: Applies to Model 747 series airplanes certificated in all categories listed in Boeing Service Bulletin 747-53-2183 with more than 5,000 landings. Compliance required as indicated. To prevent floor-beam structural failures accomplish the following:

A. Within 100 landings after the effective date of this AD, unless already accomplished, within the last 100 landings, thoroughly clean the exposed portion of the main deck pressure web inside the main landing gear wheel wells from fuselage stations 1265 to 1480 and visually inspect the pressure web for cracks as described in Boeing Service Bulletin 747-53-2183 or later FAA approved revisions.

1. If no cracks are found, repeat the above visual inspection at intervals not to exceed 200 landings until the internal inspection of paragraph A.2 or paragraph B is accomplished.

2. If cracks are found in the pressure web, before further flight, visually inspect all floor beams for cracks in accordance with Boeing Service Bulletin 747-53-2183 or later FAA approved revisions from fuselage stations 1265 to 1480. Remove all corrosion and repair all cracks in the floor beams and pressure webs in accordance with the Structural Repair Manual, or Boeing Service Bulletin 747-53-2183 or later FAA approved revisions, or in a manner approved by the Chief, Engineering and Manufacturing Branch, ANW-210. Spray the floor beams and pressure webs with BMS-3-23 moisture inhibitor or equivalent. Following repair, reinspect per paragraph B below.

B. Within 2,000 landings or 24 months, whichever comes first, after the effective date of this AD, and thereafter at intervals not to exceed 2,000 landings, visually inspect the floor beams from fuselage stations 1265 to 1480 for cracks in accordance with Boeing Service Bulletin 747-53-2183 or later FAA approved revisions. Repair any cracks in accordance with paragraphs A.2 or C before further flight. After the internal inspection of the floor beams, the main deck pressure web inspection of paragraph A need not be conducted.

C. Modification of the floor beams in accordance with the terminating action procedures described in Boeing Service Bulletin 747-53-2183 or later FAA approved revision, or procedures approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region, constitutes terminating action under the provisions of this AD.

D. For purposes of complying with this AD subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours time-in-service by the operator's fleet average from takeoff to landing for the airplane type. Only pressurized flights need be considered when establishing number of landings on the airplane.

E. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA Northwest Region, may adjust the inspection interval if the request contains substantiating data to justify the increase for that operator.

F. Aircraft may be ferried to a base for maintenance in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations.

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 Boeing Commercial Airplane Co., P.O. Box 3707, Seattle, Wash. 98124. These documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Wash. 98108.

This amendment becomes effective May 16, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c); and 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 A107.

Issued in Seattle, Wash., on April 27, 1978.

C. B. WALK, JR.,
Director, Northwest Region.

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

[FR Doc. 78-12443 Filed 5-5-78; 8:45 am]

[4910-13]

[Airspace Docket No. 78-WE-8]

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

Alteration 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:

Thomas W. Binczak, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, Calif. 90261, telephone 213-536-6182.

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."

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 Thomas W. Binczak, Air Traffic Division and DeWitte T. Lawson, Jr., Esquire, 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) is amended, effective 0901 GMT, May 18, 1978.

§ 71.171 [Amended]

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."

Camp Pendleton, Calif.,
Chandler, Ariz.,
Chico, Calif.,
Chino, Calif.,
Crescent City, Calif.,
El Monte, Calif.,
El Toro, Calif.,
Fort Huachuca, Ariz.,
Fort Ord, Calif.,

Fresno, Calif. (Chandler Municipal Airport),
Fullerton, Calif.,
Grand Canyon, Ariz.,
Lake Tahoe, Calif.,
Lancaster, Calif. (Fox Field),
LaVerne, Calif.,
Livermore, Calif.,
Los Angeles, Calif. (Hawthorne Municipal Airport),
Modesto, Calif.,
Oxnard, Calif. (Ventura County Airport),
Palmdale, Calif.,
Palm Springs, Calif.,
Palo Alto, Calif.,
Palomar, Calif.,
Phoenix, Ariz. (Deer Valley Municipal Airport),
Phoenix-Litchfield, Ariz.,
Redding, Calif.,
Riverside Calif. (Municipal Airport),
San Carlos, Calif.,
San Clemente Island, Calif.,
San Diego, Calif. (Brown Field),
San Diego, Calif. (Montgomery Field),
San Diego, Calif. (San Diego County-Gillespie Field),
San Jose, Calif. (Reid-Hillview Airport),
Santa Ana, Calif. (MCAS),
Santa Ana, Calif. (Orange County Airport),
Santa Monica, Calif.,
Santa Rosa, Calif.,
Scottsdale, Ariz.,
Torrance, Calif.,
Vandenberg AFB, Calif.,
Victorville, Calif.,
Visalia, Calif.,

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the 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 Los Angeles, Calif., on April 25, 1978.

W. R. FREHSE,
Acting Director,
Western Region.

[FR Doc. 78-12442 Filed 5-5-78; 8:45 am]

[4910-13]

[Airspace Docket No. 77-PC-2]

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

Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a 700 foot and a 1200 foot above the surface transition area within 10 NM and 25 NM respectively, of the Wake Island air navigation aid classified as a VORTAC. This action provides controlled airspace for the protection of aircraft executing instrument approaches to the Wake Island Air Force Base.

EFFECTIVE DATE: July 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone, 202-426-3715.

SUPPLEMENTARY INFORMATION:

HISTORY

On November 21, 1977, the FAA published for comment a proposal to designate 700 foot and 1200 foot transition areas at Wake Island (42 FR 59758). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Section 71.181 of Part 71 was published in the FEDERAL REGISTER on January 3, 1978, (42 FR 440). Since this action involved in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

THE RULE

This amendment to Part 71 of the Federal Aviation Regulations designates a 700 foot transition area within a 10 NM radius of the Wake Island VORTAC and a 1200 foot transition area within a 25 NM radius of the Wake Island VORTAC. This action provides controlled airspace for the protection of aircraft executing Standard Instrument Approach Procedures (SIAP) to the Wake Island Air Force Base.

DRAFTING INFORMATION

The principal authors of this document are Mr. Everett L. McKisson, Air Traffic Service, and Mr. Richard W. Danforth, Office of the Chief Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 440) is amended, effective 0901 G.m.t., July 13, 1978, by adding the following:

WAKE ISLAND

That airspace extending upward from 700 feet above the surface within a 10 NM radius of the Wake Island VORTAC; and that airspace extending upward from 1200 feet above the surface within a 25 NM radius of the Wake Island VORTAC.

Secs. 307(a), 313(a), 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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 Washington, D.C., on May 1, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-12447 Filed 5-5-78; 8:45 am]

[4910-13]

[Airspace Docket No. 77-PC-1]

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

Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a 700 foot and a 1200 foot above the surface transition area within 10 NM and 25 NM respectively, of the Johnston Island (Apollo) nondirectional radio beacon (NDB) at Johnston Island, Johnston Atoll. This action provides controlled airspace for the protection of aircraft executing instrument approaches to the Johnston Island Airport.

EFFECTIVE DATE: July 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone 202-426-3715.

SUPPLEMENTARY INFORMATION:

HISTORY

On November 21, 1977, the FAA published for comment a proposal to designate 700 and 1200 foot transition areas at Johnston Island, Johnston Atoll (42 FR 59757). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Section 71.181 of Part 71 was published in the FEDERAL REGISTER on January 3, 1978 (43 FR 440). Since this action involved, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

THE RULE

This amendment to Part 71 of the Federal Aviation Regulations designates a 700 foot transition area within a 10 NM radius of the Johnston Island (Apollo) NDB and a 1200 foot transition area within a 25 NM radius of the Johnston Island (Apollo) NDB. This action provides controlled airspace for the protection of aircraft executing Standard Instrument Approach Procedures (SIAP) to the Johnston Island Airport.

DRAFTING INFORMATION

The principal authors of this document are Mr. Everett L. McKisson, Air Traffic Service, and Mr. Richard W. Danforth, Office of the Chief Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 440) is amended, effective 0901 G.m.t., July 13, 1978, by adding the following:

JOHNSTON ISLAND, JOHNSTON ATOLL

That airspace extending upward from 700 feet above the surface within a 10NM radius of the Johnston Island (Apollo) NDB (Lat. 16°44'00"N., Long. 169°32'00"W.); and that airspace extending upward from 1200 feet above the surface within a 25 NM radius of the NDB.

(Secs. 307(a), 313(a), 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.69.)

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 Washington, D.C., on May 1, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-12448 Filed 5-5-78; 8:45 am]

[6351-01]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

Revision of Instructions to Registration Forms

AGENCY: Commodity Futures Trading Commission.

ACTION: Adoption of revised instructions to registration forms.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has revised the instructions to its registration forms for all categories of registrants to require that all such forms be filed at the Commission's Central Regional Office in Chicago, Ill. This centralization of processing is expected not only to reduce costs for the Commission but to simplify the registration procedures for many applicants.

The forms which will be affected by this regulation are:

Form 7-R which is the application for registration or renewal of registration as a futures commission merchant, commodity trading advisor or commodity pool operator;

Form 8-R which is the application for registration or renewal of registration as an associated person or floor broker and is also used to furnish supplemental information in connection with an application on Form 7-R; and

Form 3-R on which changes and corrections to registration information are reported.

EFFECTIVE DATE: May 5, 1978.

ADDRESSES: See "Availability of Forms" under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT:

Robert Shiner, Office of Qualifications and Registration, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-254-9703.

SUPPLEMENTARY INFORMATION: In May 1977, the Commission consolidated its various registration forms then in use into two basic forms—Form 7-R to be used by firms and individuals seeking registration or renewal of registration as futures commission merchants, commodity trading advisors or commodity pool operators; and Form 8-R to be used by individuals seeking registration or renewal of registration as associated persons or floor brokers, and by certain other individuals who are controlling persons of futures commission merchants, commodity trading advisors and pool operators.[1] These revisions were made, in part, to streamline the Commission's processing of the forms and, in part, to reduce the filing burden by making it possible for certain applicants for registration in more than one capacity (*e.g.*, as a futures commission merchant and a commodity pool operator) to use a single form. Neither of these objectives of the Commission in consolidating its forms has been fully achieved, because certain applicants for dual registration have still been required to make duplicative filings in different regional offices of the Commission.[2]

Until recently, applications for registration were processed by the regional office which received them; however, in an effort to utilize its own resources more efficiently, the Commission has, beginning in April 1978, forwarded all such applications to its Central Regional Office in Chicago for processing. The Commission is hereby changing the instructions on the registration forms to conform to this new procedure by requiring that all applications for registration be sent directly to its Central Regional Office.

This centralization of processing is expected not only to reduce costs for the Commission but to simplify the registration procedures for many applicants. All applicants for initial registration as futures commission merchants, commodity trading advisors or commodity pool operators, which are seeking registration in more than one capacity, will hereafter be able to file one form (Form 7-R) with one Commission office for their multiple registrations. Also, individuals who are applying for registration as an associated person on Form 8-R and who also are applying for registration on Form 7-R in another capacity (e.g., as a commodity trading advisor) will send both forms to the Central Regional Office, and any necessary contacts between the Commission and the applicant concerning registration matters will be made through that office.[3]

As stated in the "Special Notice" on the first page of Forms 7-R and 8-R, the application forms, and schedules and supplements thereto, are considered by the Commission to be public records. These records, which have formerly been publicly available at the various regional offices where they were filed, will now be maintained in the public reference facilities of the Central Regional Office of the Commission. Section 3 of the "Special Notice" has been amended to reflect this change.

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[1] *See* 42 FR 23988 (May 11, 1977).

[2] At present, applications for registration as a futures commission merchant or a floor broker are filed with the Commission's regional office nearest to the applicant; applications for registration as a commodity trading advisor or commodity pool operator are filed at the Commission's Eastern Regional Office in New York; and applications for registration as an associated person are filed at the Commission's Central Regional Office in Chicago.

[3] The Commission is aware that this new procedure may be slightly less convenient for applicants or registrants located in New York or Kansas City who were able, formerly, to file these applications in person at the Eastern or Southwestern Regional Offices of the Commission. The Commission, however, believes that the general benefits described above outweigh this consideration. Detailed questions concerning applications will now be answered by telephone or letter from the Central Regional Office.

AVAILABILITY OF FORMS

Forms with the revised instructions will be available about July 15, 1978. However, beginning May 5, 1978, all Form 3-R's, Form 7-R's and Form 8-R's should be sent to the Commission's Central Regional Office.

Blank forms will continue to be available at the Commission's main office in Washington, D.C., and at all Commission regional offices. Addresses are listed below:

Washington, D.C. Office, 2033 K Street NW., Washington, D.C. 20581.
Eastern Regional Office, One World Trade Center, Suite 4747, New York, N.Y. 10048.
Central Regional Office, 233 South Wacker Drive, 46th Floor, Chicago, Ill. 60606.
Minneapolis Office, Central Region, 510 Grain Exchange Building, Minneapolis, Minn. 55415.
Southwestern Regional Office, 4901 Main Street, Room 208, Kansas City, Mo. 64112.
Western Regional Office, Two Embarcadero Center, Suite 975, San Francisco, Calif. 94111.

* * * * *

Pursuant to Commission regulation 13.5(b)(2) (17 CFR 13.5(b)(2)) and the Administrative Procedure Act, 5 U.S.C. 553(b) (1970), the Commission for good cause finds that notice and public procedure with respect to the foregoing revisions are unnecessary. The Commission's reasons for so finding are that the revisions relate solely to the Agency's internal procedures for processing application forms and impose no additional burdens upon applicants. Thus, pursuant to sections 4d, 4e, 4f, 4k, 4m, 4n, and 8a of the Commodity Exchange Act, as amended (7 U.S.C. 6d, 6e, 6f, 6k, 6m, 6n, and 12a (1976).), the Commission hereby revises section 3 of the Special Notice of Form 7-R and Form 8-R, and instructions to Form 3-R, Form 7-R and Form 8-R, as set forth below:

CFTC FORM 7-R—SPECIAL NOTICE (PAGE 1)

Section 3 is revised to read as follows:

This application is considered by the Commission as a public record and will be available for inspection by any interested person. Copies wil be maintained in the public reference facilities of the Commission's Central Regional Office at Sears Tower, 46th Floor, 233 South Wacker Drive, Chicago, Ill. 60606. If the applicant believes that the placing of the information on this form, including Schedules A, B, or C, in the Commission's public files would reveal sensitive business information, or would constitute a clearly unwarranted invasion of personal privacy, the applicant may petition the Commission to treat such information as nonpublic in response to requests under the Freedom of Information Act (5 U.S.C. 552).

CFTC FORM 7-R—INSTRUCTIONS (PAGE 4)

The paragraph beginning "Who Must File" is revised to read as follows:

All futures commission merchants, commodity trading advisors and commodity pool operators must file this form in order to be registered with the Commission. Registration in one category (e.g., futures commission merchant) subject to regulation under the Commodity Exchange Act does not include registration in any other category subject to regulation under the Act (e.g., commodity pool operator). However, the same Form 7-R may be used for simultaneous application for registration, or renewal of registration, in more than one category. Where an applicant files a separate application for registration in one category and the information asked for in an item on a form has previously been provided by the applicant in response to the same or similar items contained in an application or supplement thereto, for registration in another category, such item may be answered by reference to the previous application or supplement thereto.

The paragraph beginning "Where to File" is revised to read as follows:

Futures commission merchants, commodity trading advisors and commodity pool operators should send their applications for registration or reregistration to the Central Regional Office of the Commodity Futures Trading Commission at Sears Tower, 46th Floor, 233 S. Wacker Drive, Chicago, Ill. 60606. Send the original copy of the completed Form 7-R, together with the registration fee. Retain the completed duplicate copy for your files. Also enclose related Form 8-R's, if any.

CFTC FORM 8-R—SPECIAL NOTICE (PAGE 1)

Section 3 is revised to read as follows:

This form, with the exception of the supplementary attachments to items 3, 4 and 12 (if any), is considered by the Commission as a public record and will be available for inspection by any interested person. Copies will be maintained in the public reference facilities of the Commission's Central Regional Office at Sears Tower, 46th Floor, 233 S. Wacker Drive, Chicago, Ill. 60606. The Commission may disclose supplementary information in items 3, 4, and 12 to third parties (1) in connection with matters in litigation; (2) in connection with Commission investigations; (3) where the information is furnished to regulatory, self-regulatory and law enforcement agencies to assist them in meeting responsibilities assigned to them by law; (4) where disclosure is required under the Freedom of Information Act (5 U.S.C. 552); and (5) in other circumstances in which withholding of such information appears unwarranted. If the individual believes that the placing of any other information on this form in the Commission's public files would constitute an unwarranted invasion of his personal privacy or would reveal sensitive business information, he may petition the Commission to treat such information as non-public in response to requests under the Freedom of Information Act.

CFTC FORM 8-R—INSTRUCTIONS (PAGE 4)

The paragraph beginning "Where to File" is revised to read as follows:

Send the original copy of the completed form and the registration fee, if applicable, to the Central Regional Office of the Commodity Futures Trading Commission at Sears Tower, 46th Floor, 233 S. Wacker Drive, Chicago, Ill. 60606. If you are filing in connection with the registration of a futures commission merchant, commodity trading advisor, or commodity pool operator, attach the original copy of the completed Form 8-R to the related Form 7-R. Retain the completed duplicate copy of Form 8-R for your files.

CFTC FORM 3-R—INSTRUCTIONS (ON REVERSE SIDE OF FORM)

Section 7 on "Where to File" is revised to read as follows:

Send the completed form to the Central Regional Office of the Commodity Futures Trading Commission at Sears Tower, 46th Floor, 233 S. Wacker Drive, Chicago, Ill. 60606. A duplicate copy of this statement should be kept for your files.

Issued in Washington, D.C., on May 2, 1978, by the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc. 78-12335 Filed 5-5-78; 8:45 am]

[4710-06]

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

SUBCHAPTER E—VISAS

[Dept. Reg. 108.755]

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Miscellaneous Amendments

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: Various of the Department's regulations governing immigrant visas are revised because of recent changes in law and for the sake of clarity. All of the changes are largely technical in nature.

EFFECTIVE DATE: May 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald M. Brown, 202-632-1983.

SUPPLEMENTARY INFORMATION: The intent of § 42.65 (a), (b), and (d) and of section 203(e) of the Act, upon which they are based, is to provide for termination of registration of all categories of immigrants. The actual language used implied that the regulation applied only to numerically limited classes of immigrants. Section 42.65 (a), (b), and (d) are amended to make it clear that all categories of immigrants are subject to its provisions.

The abolition of contract location physicians necessitates the amend-

ment of §§ 42.91(a)(1-6)(i) and 42.113(b) to eliminate reference to them.

Section 42.91(a)(10)(iv) has been rewritten largely in the interests of clarity.

Section 42.91(a)(12)(iii) is amended to include all persons contemplated under section 212(a)(12) of the Act, not just prostitutes and former prostitutes. The law requires this interpretation; and the Department has always adhered to the meaning of the law. Omission of the other categories from the regulations was an oversight.

Section 42.91(a)(22) is amended to render ineligible for an immigrant visa an alien who departed from or remained outside of the United States in order to avoid or evade service in the Armed Forces while he was in nonimmigrant status. Section 212(a)(22) of the Act requires such an interpretation, and the Department has always followed the meaning of the law. The previous exemption of this class of aliens in the regulation was a mistake.

The enactment on October 12, 1976 of Pub. L. 94-484, the Health Professions Educational Assistance Act of 1976, specifically Title VI, requires that § 42.91(c) be amended.

Section 42.124(a)(3) is amended to reflect the change in the starting date for the fiscal year.

Accordingly, Part 42 of Title 22, Code of Federal Regulations, is revised as set forth below.

§ 42.65 [Amended]

1. Amend § 42.65(a) by changing "on an immigrant visa waiting list" to read "for an immigrant visa".

2. Amend § 42.65(b) by changing "on an immigrant visa waiting list" to read "for an immigrant visa".

3. Amend § 42.65(d) by changing "on an immigrant visa waiting list" to read "for an immigrant visa".

§ 42.91 [Amended]

4. Amend § 42.91(a)(1-6)(i) by deleting the comma following "Health Service", by deleting "of a contract location physician," and by deleting "contract location or".

5. Section 42.91(a)(10)(iv) is amended to read as follows:

§ 42.91 Aliens ineligible to receive visas.

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.*

* * * * *

(10) *Conviction of two or more offenses.* * * *

(iv) An alien shall not be considered ineligible to receive a visa under section 212(a)(10) of the Act by reason in part of having been convicted of an offense for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany, acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under section 212(a)(10) of the Act.

* * * * *

6. Section 42.91(a)(12)(iii) is amended to read as follows:

§ 42.91 Aliens ineligible to receive visas.

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.*

* * * * *

(12) *Prostitution, procuring and related activities.* * * *

(iii) A person who comes under one or more of the categories of persons described in section 212(a)(12) of the Act shall be ineligible to receive a visa under that section notwithstanding the fact that the acts engaged in may not be prohibited under the laws of the foreign country where the acts occurred.

* * * * *

§ 42.91 [Amended]

7. Amend § 42.91(a)(22) by deleting the comma following "if" and by deleting "having other than non-immigrant status,".

8. Amend § 42.91(c) by deleting the comma after "(84 Stat. 116)" and by adding immediately thereafter "and by the Act of October 12, 1976 (90 Stat. 2301),".

§ 42.113 [Amended]

9. Amend § 42.113(b) by deleting "by a contract location physician or".

§ 42.124 [Amended]

10. Amend § 42.124(a)(3) by changing "July 1 of each year," to read "the first day of each fiscal year,".

AUTHORITY: These amendments are issued pursuant to the authority contained in section 104 of the Immigration and Nationality Act (8 U.S.C. 1104). Compliance with section 553 of Title 5 of the United States Code as to notice of proposed rulemaking and delayed effective date is unnecessary in this instance because the amendments contained in this order are interpretative and editorial in nature.

Dated: March 30, 1978.

BARBARA M. WATSON,
Assistant Secretary for Consular Affairs.

[FR Doc. 78-12389 Filed 5-5-78; 8:45 am]

[4310-02]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER F—ENROLLMENT

PREPARATION OF ROLLS OF CERTAIN TRIBES AND BANDS OF INDIANS

APRIL 17, 1978.

AGENCY: Bureau of Indian Affairs.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is making miscellaneous changes to its regulations by revoking certain parts in their entirety, and by revoking certain paragraphs of another part. These amendments are necessary because the rolls for which the regulations were issued have been completed, thus the regulations no longer have any effect on either the Bureau or the public.

FOR FURTHER INFORMATION CONTACT:

Ms. Janet L. Parks, Chief, Branch of Tribal Enrollment Services, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20245, 202-343-2985; principal author, Janet L. Parks.

EFFECTIVE DATE: This amendment shall become effective May 8, 1978.

SUPPLEMENTARY INFORMATION: It is generally the policy of the Department of the Interior to allow time for interested persons to take part in the rulemaking process. However, this amendment is entirely administrative in nature. The public rulemaking process is dispensed with under the exception provided in 5 U.S.C. 553(b)(B)(1970).

This amendment is made pursuant to the authority vested in the Secretary of Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

Subchapter F, Chapter I, Title 25 of the Code of Federal Regulations is hereby amended as follows:

PART 41—PREPARATION OF ROLLS OF INDIANS

§ 41.3 [Amended]

Part 41, § 41.3 is amended by revoking the following paragraphs:

(b) Tlingit and Haida Tribes in Alaska.

(c) Miami Indians of Oklahoma and Indiana.

(d) Nooksack Tribe of Indians.

(e) Duwamish Tribe of Indians.

(f) Omaha Tribe of Nebraska.

(g) Quileute Tribe of Indians.

(h) Hoh Tribe.
(i) Brotherton Indians of Wisconsin.
(j) Upper and Lower Chehalis Tribes of Indians.
(k) Delaware Nation of Indians.
(l) Southern Paiute Nation of Indians.
(m) Wea, Piankashaw, Peoria and Kaskaskia Indians.
(n) Chemehuevi Tribe of Indians.
(p) Miami Indians of Oklahoma and Indiana.
(q) Wea, Piankashaw, Peoria and Kaskaskia Indians.
(u) Fort Sill Apache Tribe.
(v) Cherokee Nation of Oklahoma.
(aa) Apache Tribe of Oklahoma.

The following Parts of Subchapter F are revoked in their entirety:

PART 43—ENROLLMENT OF INDIANS OF THE CABAZON, AUGUSTINE, AND TORRES-MARTINEZ BANDS OF MISSION INDIANS IN CALIFORNIA [REVOKED]

PART 43a—MEMBERSHIP ROLL OF PONCA TRIBE OF NATIVE AMERICANS OF NEBRASKA [REVOKED]

PART 43b—PREPARATION OF A ROLL TO SERVE AS THE BASIS FOR THE DISTRIBUTION OF THE JUDGMENT FUNDS AWARDED THE CHEROKEE BAND OF SHAWNEE INDIANS [REVOKED]

PART 43c—PREPARATION OF A ROLL TO SERVE AS THE BASIS FOR THE DISTRIBUTION OF THE JUDGMENT FUNDS AWARDED THE NEHALEM AND TILLAMOOK BANDS OF THE TILLAMOOK INDIANS [REVOKED]

PART 43d—PREPARATION OF A ROLL TO SERVE AS THE BASIS FOR THE DISTRIBUTION OF THE JUDGMENT FUNDS AWARDED THE SNAKE OR PAIUTE INDIANS OF THE FORMER MALHEUR RESERVATION [REVOKED]

PART 43e—PREPARATION OF A ROLL TO SERVE AS THE BASIS FOR DISTRIBUTION OF JUDGMENT FUNDS AWARDED TO CERTAIN PERSONS OF CALIFORNIA INDIAN DESCENT [REVOKED]

PART 43f—PREPARATION OF ROLLS TO SERVE AS THE BASIS FOR DISTRIBUTION OF JUDGMENT FUNDS AWARDED THE CREEK NATION OF INDIANS IN INDIAN CLAIMS COMMISSION DOCKETS NUMBERED 21 AND 276 [REVOKED]

PART 43i—PREPARATION OF A ROLL TO SERVE AS THE BASIS FOR THE DISTRIBUTION OF JUDGMENT FUNDS AWARDED TO THE NORTHWESTERN BAND OF SHOSHONE INDIANS [REVOKED]

PART 43j—PREPARATION OF A ROLL TO SERVE AS THE BASIS FOR THE DISTRIBUTION OF JUDGMENT FUNDS AWARDED TO THE DELAWARE TRIBE OF INDIANS AND THE ABSENTEE DELAWARE TRIBE OF WESTERN OKLAHOMA [REVOKED]

PART 43k—REVISION OF THE FINAL ROLL OF THE MENOMINEE TRIBE OF WISCONSIN [REVOKED]

PART 43m—BRINGING UP TO DATE OF THE MEMBERSHIP ROLL OF THE CABAZON BAND OF MISSION INDIANS TO BE USED AS THE BASIS TO DISTRIBUTE JUDGMENT FUNDS [REVOKED]

PART 44—PREPARATION OF ROLLS FOR THE DISTRIBUTION OF FUNDS AWARDED CERTAIN INDIAN TRIBES OR BAND OF OREGON [REVOKED]

PART 45—PREPARATION OF A ROLL FOR THE DISTRIBUTION OF THE JUDGMENT AWARDED THE OTOE AND MISSOURIA TRIBE [REVOKED]

PART 49—PREPARATION OF A ROLL FOR THE DISTRIBUTION OF THE JUDGMENT AWARDED THE QUAPAW TRIBE [REVOKED]

PART 50—PREPARATION OF A MEMBERSHIP ROLL TO SERVE AS THE BASIS FOR THE DISTRIBUTION OF THE JUDGMENT FUNDS AWARDED TO THE OMAHA TRIBE OF INDIANS [REVOKED]

No further changes are made in Subchapter F.

Since this amendment is of an administrative nature and the regulations being revoked will have no further impact on the public, the 30-day deferred effective date is dispensed with under the exception provided in subsection (d)(3) of 5 U.S.C. 553 (1970).

NOTE.—The Bureau of Indian Affairs 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.

FORREST J. GERARD,
Assistant Secretary,
Indian Affairs.

[FR Doc. 78-12405 Filed 5-5-78; 8:45 am]

[4830-01]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7545]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Repeal of Section 963 of Subpart F

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the repeal of the minimum distribution rules for controlled foreign corporations. Changes to the applicable tax law were made by the Tax Reduction Act of 1975. These regulations provide necessary guidance to the public for compliance with the law, and affect certain United States corporate shareholders of controlled foreign corporations.

DATE: The regulations are effective generally for taxable years of United

States corporate shareholders or controlled foreign corporations ending after December 31, 1975.

FOR FURTHER INFORMATION CONTACT:

Jason R. Felton of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-4473, not a toll-free number.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 3, 1977, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 963 of the Internal Revenue Code of 1954, 42 FR 12199. The amendments were proposed to conform the regulations to section 602 (a)(1) of the Tax Reduction Act of 1975 (89 Stat. 58). After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

SECTION 963

A new section in the regulations, § 1.963-0, provides for the repeal of section 963 in § 1.963-1 through § 1.963-7. This new section also contains transitional rules for 1976, the first year in which the repeal is effective. In addition, § 1.963-0 has a provision that requires deficiency distributions to be made for appropriate taxable years subsequent to the repeal of section 963. Finally, § 1.963-0 (d) provides that any special adjustments to be made under the special rules of section 963 and the regulations thereunder (such as the special adjustments required under § 1.963-4), for a taxable year subsequent to the taxable year in which an election to receive a minimum distribution under section 963 was made, shall be made notwithstanding the repeal of section 963. This provision has been redrafted for clarity. Thus, no substantive changes were made.

CROSS-REFERENCES

Sections 1.1248-3 and 1.1248-4 have cross-references to section 963 or the regulations thereunder. These cross-references are used in a substantive manner that is unrelated to the minimum distribution concept. Since these provisions will survive the repeal of section 963, they have been amended in order to restate the same rules but without any reference to section 963.

A second group of cross-references to section 963 or the regulations thereunder has prospective effect despite the repeal of section 963. In each of these cases, the cross-reference relates to an event that took place in a year in which section 963 was in effect. This kind of event will continue to have tax consequences for taxable years subsequent to the repeal of section 963. Therefore, in order to assure the retention of these references in the regulations, the parenthetical "(applied as if section 963 had not been repealed by the Tax Reduction Act of 1975)" was added to the following provisions:

Sec.
1.952-1 (c)(2)(ii).
1.959-3 (b)(3).
1.960-1 (c)(1)(v).
1.964-1 (b)(2) (flush material).
1.964-1 (c)(2).
1.964-1 (c)(6)(iv) and (flush material).
1.964-2 (c)(1) (flush material).

The language of the parenthetical in the proposed regulations, "(as in effect prior to the Tax Reduction Act of 1975)," has been changed to make clear the intent of the amendment.

A third group of cross-references has no application for years subsequent to the repeal of section 963. Due to the effective date method of repeal used in § 1.963-0, no amendment of the following sections was required:

Sec.
1.78-1 (a).
1.78-1 (f).
1.864-5 (d).
1.951-1 (a)(2)(i).
1.952-1 (c)(2)(iii).
1.960-2 (a).
1.964-1 (b)(3) (Example (2)).
1.964-1 (c)(5).
1.964-3 (b)(1).
1.964-3 (c)(2).
1.964-4 (c).

Three cross-references were handled previously by T.D. 7481 published in the FEDERAL REGISTER (42 FR 20123) on April 18, 1977 (relating to the foreign tax credit for United States corporate shareholders in foreign corporations):

Sec.
1.902-1 (b)(1)(viii).
1.902-1 (g)(1).
1.902-1 (g)(2).

SECTION 1.902-1(g)(1) ELECTION

Paragraph 1 of the proposed regulations amended § 1.902-1(g)(3) by including a special election rule for coporate United States shareholders that have made a section 963 election in their last taxable year beginning before January 1, 1976. A comment suggested that the 30-day election period provided in the proposed regulations is inconsistent with the election allowed controlled foreign corporations that never made the § 1.902-1(g)(1) election or did not make the election for its last taxable year beginning before January 1, 1976. After considering this comment, it was decided that it would be inappropriate to allow some, but not all, taxpayers to make the election. Therefore, this paragraph has been deleted.

OTHER CHANGES

Paragraph 3 of the proposed regulations published on March 3, 1977 (42 FR 12199) amended the notice of proposed rulemaking published on August 9, 1976 (41 FR 33290) (relating to foreign base company shipping income). Since these latter proposed regulations have not been adopted, it would be inappropriate to adopt amendments to those regulations at this time.

DRAFTING INFORMATION

The principal author of this regulation was Karl P. Fryzel of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the proposed amendments to the regulations other than those contained in paragraph 3, which will remain outstanding, are adopted subject to the changes set forth below:

PARAGRAPH 1. The third sentence of paragraph (g)(3) of § 1.902-1, as set forth in paragraph 1 of the notice of proposed rulemaking, is deleted.

PAR. 2. The amendments contained in paragraphs 2, 4, 5, 7, and 8 of the notice of proposed rulemaking are revised by deleting "(as in effect prior to the Tax Reduction Act of 1975)" each time it appears and inserting in its place, "(applied as if section 963 had not been repealed by the Tax Reduction Act of 1975)".

PAR. 3. Paragraph (d) if § 1.963-0, as set forth in paragraph 6 of the notice of proposed rulemaking, is revised to read as follows:

§ 1.963-0 *Repeal of section 963; effective dates.*

* * * * *

(d) *Elections and special adjustments pursuant to section 963 to be taken into account for taxable years subsequent to the repeal of section 963.* If a United States shareholder of a controlled foreign corporation elects to receive a minimum distribution under section 963 for a taxable year, section 963 and the regulations thereunder may require certain elections and adjustments to be made in subsequent taxable years. These elections and adjustments shall be taken into account for subsequent taxable years as if section 963 were still in effect and no election to receive a minimum distribution were made after the effective date of the repeal of section 963. Examples of these elections and special adjustments include, but are not limited to, the election which may be made pursuant to § 1.963-3(g)(2), relating to the special extended distribution period, and the special adjustments to be made pursuant to § 1.963-4, relating to the minimum overall tax burden test.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

WILLIAM E. WILLIAMS,
Acting Commissioner of Internal Revenue.

Approved: March 31, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

§ 1.952-1 [Amended]

Par. 1. Section 1.952-1(c)(2)(ii) is amended by inserting "(applied as if section 963 had not been repealed by the Tax Reduction Act of 1975)" immediately after the words "or paragraph (d)(2)(ii) of § 1.963-2".

§ 1.959-3 [Amended]

Par. 2. Paragraph (b)(3) of § 1.959-3 is amended by adding "(applied as if section 963 had not been repealed by the Tax Reduction Act of 1975)" immediately after the words "paragraph (e) of § 1.963-3".

§ 1.960-1 [Amended]

Par. 3. Paragraph (c)(1)(v) of § 1.960-1 is amended by adding "(applied as if section 963 had not been repealed by the Tax Reduction Act of 1975)" immediately after the words "paragraph (e) of § 1.963-3".

Par. 4. The following new section is added immediately after § 1.963:

§ 1.963-0 Repeal of section 963; effective dates.

(a) *Repeal of section 963.* Except as provided in paragraphs (b) and (c) of this section, the provisions of section 963 and §§ 1.963-1 through 1.963-7 are repealed for taxable years of foreign corporations beginning after December 31, 1975, and for taxable years of United States shareholders (within the meaning of section 951(b)) within which or with which such taxable years of such foreign corporations end.

(b) *Transitional rules for chain or group election*—(1) *In general.* If a United States shareholder (within the meaning of section 951(b) makes either a chain election pursuant to § 1.963-1(e) or a group election pursuant to § 1.963-1(f) for a taxable year of such shareholder beginning after December 31, 1975, then a foreign corporation shall be includible in such election only if—

(i) It has a taxable year beginning before January 1, 1976, which ends within such taxable year of the United States shareholder, and

(ii) It is either—

(A) A controlled foreign corporation or

(B) A foreign corporation by reason of ownership of stock in which such shareholder indirectly owns (within the meaning of section 958(a)(2)) stock in a controlled foreign corporation to which this subparagraph applies.

(2) *Series rule.* If any foreign corporation in a series of foreign corporations is excluded by subparagraph (i) of this paragraph from a chain or group election of a United States shareholder for its taxable year, then any foreign corporation in which the United States shareholder owns stock indirectly by reason of ownership of stock in such excluded corporation shall also be excluded from such election to the extent of such indirect ownership regardless of when its taxable year begins.

(3) *Illustration.* The application of this paragraph may be illustrated by the following example:

Example. (a) M is a domestic corporation, A, B, D, and E are controlled foreign corporations, and C is a foreign corporation other than a controlled foreign corporation. All five foreign corporations, each have only one class of stock outstanding. M owns directly all of the stock of A, which in turn owns directly all of the stock of B, which in turn owns directly 60 percent of the stock of D, which in turn owns directly all of the stock of E. M also owns directly 40 percent of the stock of C, which in turns owns directly the remaining 40 percent of the stock of D. M is a United States shareholder with respect to no other foreign corporation. M and B each use the calendar year as the taxable year. A, C, D, and E each use a fiscal year ending on November 30 as the taxable year. For calendar year 1976, M may make either a first-tier election with respect to A, a chain election with respect to C and D (to the extent of M's indirect 16-percent stock interest in D by reason of its direct ownership of 40 percent of the stock of C) or a group election with respect to A, C, D (to the extent of such 16-percent stock interest) and E (to the extend of M's indirect 16-percent stock enterest in E).

(b) M's indirect 100 percent stock interest in B will be excluded from any chain or group election made by M for calendar year 1976 since B is a controlled foreign corporation which does not have a taxable year beginning before January 1, 1976, which ends within the taxable year of M beginning after December 31, 1975, for which M has made either a chain or group election.

(c) M's indirect 60 percent stock interest through A and B in D and E will be excluded from any chain or group election made by M for calendar year 1976 since such 60 percent interests are indirectly owned by M by reason of its indirect ownership of stock in B, which is a foreign corporation which does not have a taxable year beginning before January 1, 1976, which ends within the taxable year of M beginning after December 31, 1975, for which M has made either a chain or group election.

(d) If C used the calendar year as its taxable year and was therefore excluded from a chain election made with respect to it and D, then D would also be excluded from such an election, since D would then be a foreign corporation in which M owns stock indirectly by reason of ownership of stock in C, which is excluded from such election.

(c) *Deficiency distributions.* The rules relating to deficiency distributions under section 963(e)(2) and § 1.963-6 shall continue to apply to a taxable year beginning after the effective date of the repeal of section 963 in which it is determined that a deficiency distribution must be made for an earlier taxable year for which a United States shareholder made an election to secure the exclusion under section 963 but failed to receive a minimum distribution.

(d) *Special adjustments pursuant to section 963 to be taken into account for taxable years subsequent to the repeal of section 963.* If a United States shareholder of a controlled foreign corporation elects to receive a minimum distribution under section 963 for a taxable year, section 963 and the regulations thereunder may require certain elections and adjustments to be made in subsequent taxable years. These elections and adjustments shall be taken into account for subsequent taxable years as if section 963 were still in effect and no election to receive a minimum distribution were made after the effective date of the repeal of section 963. Examples of these elections and special adjustments include, but are not limited to, the election which may be made pursuant to § 1.963-3(g)(2), relating to the special extended distribution period, and the special adjustments to be made pursuant to § 1.963-4, relating to the minimum overall tax burden test.

§ 1.964-1 [Amended]

Par. 5. Section 1.964-1 is amended by adding "(applied as if section 963 had not been repealed by the Tax Reduction Act of 1975)" in the following places:

1. Immediately after the words "under section 963(c) (2)(B) or (3)(B)" in the second sentence following paragraph (b)(2)(ii).

2. Immediately after the words "under section 963(c) (2)(B) or (3)(B)" in paragraph (c)(2).

3. Immediately after the words "under section 963" in paragraph (c)(6)(iv) and immediately after the words "under section 963(c) (2)(B) or (3)(B)" in the second sentence following paragraph (c)(6)(iv).

§ 1.964-2 [Amended]

Par. 6. The third sentence following paragraph (c)(1)(ii) of § 1.964-2 is amended by inserting "(applied as if section 963 had not been repealed by the Tax Reduction Act of 1975))" immediately after the words "(within the meaning of § 1.963-6".

§ 1.1248-3 [Amended]

Par. 7. Section 1.1248-3 is revised as follows:

1. Example (1) of paragraph (c)(3) is amended by deleting "80 percent" from the last sentence thereof and inserting in lieu thereof "30 percent".

2. Paragraph (c)(4) is amended by deleting the words "(d)(2)(i) (*d*) and

(e) of § 1.963-2" and inserting in lieu thereof the words "(e) (2) and (3) of § 1.951-1".

3. Paragraph (d)(6) is amended by deleting the words "(d)(2)(i) (d) and (e) of § 1.963-2" and inserting in lieu thereof the words "(e)(2) and (3) of § 1.951-1".

§ 1.1248-4 [Amended]

Par. 8. Paragraph (e)(3) of § 1.1248-4 is amended by deleting the words "(d)(2)(i) (d) and (e) of § 1.963-2" and inserting in lieu thereof the words "(e) (2) and (3) of § 1.951-1".

[FR Doc. 78-12492 Filed 5-5-78; 8:45 am]

[4830-01]

[T.D. 7547]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

General Tax Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the general tax credit. Changes in the applicable tax law were made by the Revenue Adjustment Act of 1975, the Tax Reform Act of 1976, and the Tax Reduction and Simplification Act of 1977. These regulations provide necessary guidance to the public for compliance with the law.

EFFECTIVE DATES: The regulations are effective for taxable years ending after December 31, 1975, and before January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

William E. Mantle of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3734.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On April 18, 1977, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 42 of the Internal Revenue Code of 1954 (42 FR 20150). The amendments were proposed to conform the regulations to section 3 of the Revenue Adjustment Act of 1975 (89 Stat. 972) and to section 401 (a) of the Tax Reform Act of 1976 (90 Stat. 1555). A public hearing was neither requested nor held. One written comment was received suggesting a change in the proposed amendments. That suggestion has been implemented in this Treasury decision. The proposed amendments are thus adopted as revised by this Treasury decision.

Additionally, certain revisions to the proposed amendments are made by this Treasury decision in order to conform the regulations to the amendments made to section 42 by sections 101(c), 103(a), and 106(a) of the Tax Reduction and Simplification Act of 1977 (91 Stat. 132, 139, 141). These revisions parallel the statutory amendments and are not changes upon which public comment would be useful. For this reason, and because there is a need for immediate guidance for taxpayers, section 553 (b), (c) and (d) of the Administrative Procedure Act (5 U.S.C. 553 (b), (c), (d)) requiring further notice of proposed rulemaking, opportunity for public participation and delay in effective date are found to be inapplicable.

COMPUTATION OF CREDIT USING EXTRA EXEMPTIONS FOR AGE 65 AND BLIND

Section 101(c) of the Tax Reduction and Simplification Act of 1977 (91 Stat. 132) amended section 42(a)(2) to allow individuals electing the credit in an amount equal to $35 multiplied by their personal exemptions to take into account the additional exemptions allowed by section 151 (c) and (d) for age of 65 or more and for blindness. This change makes it possible to use tax tables that incorporate the general tax credit. In order to facilitate incorporation of the credit in the tax tables, section 42(a) was also amended to provide that the credit is a credit against the section 1 tax (or the tax imposed in lieu of the section 1 tax) and a new subsection (e) was added to section 42 to provide for incorporation of the credit in the tax tables.

COMPUTATION FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS

In order to simplify further the tax form and tax computation, section 42(c) was also amended by section 101(c) of the Tax Reduction and Simplification Act of 1977 to require a married individual filing a separate tax return to compute the credit in an amount equal to $35 multiplied by the number of personal exemptions to which the individual is entitled under section 151.

EXTENSION OF CREDIT

Following publication of the proposed amendments, section 103(a) of the Tax Reduction and Simplification Act of 1977 (91 Stat. 139, 141) extended the availability of the credit for an additional year. Thus, the credit is available for taxable years ending after December 31, 1975, and as amended by the Tax Reduction and Simplification Act of 1977 is available for taxable years beginning after December 31, 1976, and ending before January 1, 1979.

DRAFTING INFORMATION

The principal author of this regulation was William E. Mantle of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, 26 CFR Part 1 is amended as follows:

§ 1.42 [Deleted]

PARAGRAPH 1. Section 1.42 and the historical note are deleted.

PAR. 2. Section 1.42-1 is amended by revising the heading to read as follows:

§ 1.42-1 Tax credit for personal exemptions for taxable years ending in 1975.

* * * * *

PAR. 3. The following new section is added immediately after § 1.42-1.

§ 1.42A-1 General tax credit for taxable years ending after December 31, 1975, and before January 1, 1979.

(a)(1) *Allowance of credit for taxable years ending after December 31, 1975, and beginning before January 1, 1977.* Subject to the special rules of paragraphs (b)(1), (c) and (d) and the limitation of paragraph (e)(1) of this section, an individual is allowed as a credit against the tax imposed by chapter 1 for the taxable year in the case of taxable years ending after December 31, 1975, and beginning before Januray 1, 1977, an amount equal to the greater of—

(i) 2 percent of so much of the individual's taxable income as does not exceed $9,000, or

(ii) $35 multiplied by the total number of deductions for personal exemptions to which the individual is entitled for the taxable year under section 151 (b) and (e) and the regulations thereunder (relating to allowance of deductions for personal exemptions with respect to the individual, the individual's spouse, and dependents).

For purposes of applying subdivision (ii) of this paragraph (a)(1), the total number of deductions for personal exemptions shall not include any additional exemptions to which the individual or his spouse may be entitled based upon age of 65 or more or blindness under section 151 (c) or (d) and the regulations thereunder.

(2) *Allowance of credit for taxable years beginning after December 31,*

1976, and ending before Januray 1, 1979. Subject to the special rules of paragraphs (b)(2), (c) and (d) and the limitation of paragraph (e)(2) of this section, an individual is allowed as a credit against the tax imposed by section 1, or against the tax imposed in lieu of the tax imposed by section 1, for the taxable year in the case of taxable years beginning after December 31, 1976, and ending before January 1, 1979, an amount equal to the greater of—

(i) 2 percent of so much of the individual's taxable income for the taxable year, reduced by the zero bracket amount determined under section 63 (d), as does not exceed $9,000, or

(ii) $35 multiplied by the total number of deductions for personal exemptions to which the individual is entitled for the taxable year under section 151 and the regulations thereunder (relating to allowance of deductions for personal exemptions).

(b) *Married individuals filing separate returns*—(1) *For taxable years ending after December 31, 1975, and beginning before January 1, 1977.* In the case of taxable years ending after December 31, 1975, and beginning before January 1, 1977, a married individual who files a separate return for the taxable year is allowed as a credit for the taxable year an amount equal to either—

(i) 2 percent of so much of the individual's taxable income as does not exceed $4,500, or

(ii) $35 multiplied by the total number of deductions for personal exemptions to which the individual is entitled for the taxable year under section 151 (b) and (e) and the regulations thereunder, but only if both the individual and the individual's spouse elect to have the credit determined in the manner described in this subdivision (ii) for their corresponding taxable years. The elections shall be made by both married individuals separately calculating and claiming the credit in the manner and amount described in this subdivision (ii) on their separate returns for their corresponding taxable years. The rules of section 142 (a) and the regulations thereunder (relating to individuals not eligible for the standard deduction) in effect for taxable years beginning before January 1, 1977, apply to determine whether the taxable years of the individual and the individual's spouse correspond to each other. For purposes of applying this subdivision (ii), the total number of deductions for personal exemptions shall not include any additional exemptions to which the individual may be entitled based upon age of 65 or more or blindness under section 151 (c) or (d) and the regulations thereunder.

(2) *For taxable years beginning after December 31, 1976, and ending before January 1, 1979.* In the case of taxable years beginning after December 31, 1976, and ending before January 1, 1979, a married individual who files a separate return for the taxable year shall determine the amount of the credit for the taxable year under section 42(a)(2) and § 1.42A-1(a)(2)(ii).

(3) *Determination of marital status.* For purposes of this paragraph, the determination of marital status shall be made as provided by section 143 and the regulations thereunder (relating to the determination of marital status).

(c) *Return for short period on change of annual accounting period.* In computing the credit provided by section 42 and this section for a period of less than 12 months (hereinafter referred to as a "short period"), where income is to be annualized under section 443(b)(1) in order to determine the tax—

(1) The credit allowed by paragraph (a) (1)(i) and (2)(i) of this section shall be computed based upon the amount of the taxable income annualized under the rules of section 443(b)(1) and § 1.443-1(b)(1), or

(2) (i) The credit allowed by paragraph (a)(1)(ii) of this section shall be computed based upon the total number of deductions for personal exemptions to which the individual is entitled for the short period under section 151 (b) and (e) and the regulations thereunder (relating to allowance of deductions for personal exemptions with respect to the individual, the individual's spouse, and dependents), and

(ii) The credit allowed by paragraph (a)(2)(ii) of this section shall be computed based upon the total number of deductions for personal exemptions to which the individual is entitled for the short period under section 151 and the regulations thereunder (relating to allowance of deductions for personal exemptions).

As so computed, the credit allowed by section 42 and this section shall be allowed against the tax computed on the basis of the annualized taxable income. See § 1.443-1(b)(1)(vi).

(d) *Certain persons not eligible*—(1) *Estates and trusts.* The credit provided by section 42 and this section shall not be allowed in the case of any estate or trust. Thus, the credit shall not be allowed to an estate of an individual in bankruptcy or to an estate of a deceased individual. However, in the case of a deceased individual, the credit shall be allowed on the decedent's final return filed by his executor or other representative. Also, the credit provided by section 42 and this section shall be allowed in the case of a return filed by an estate of an infant, incompetent, or an individual under a disability.

(2) *Nonresident alien individuals.* The credit provided by section 42 and this section shall not be allowed in the case of any nonresident alien individual. As used in this subparagraph, the term "nonresident alien individual" has the meaning provided by § 1.871-2. See, however, section 6013(g) for election to treat nonresident alien individual as resident of the United States. The credit shall be allowed to an alien individual who is a resident of the United States for part of the taxable year. See § 1.871-2(b) for rules relating to the determination of residence of an alien individual. For purposes of paragraph (a) (1)(i) and (2)(i) of this section, the credit allowed shall be computed by taking into account only that portion of the individual's taxable income which is attributable to the period of his residence in the United States. For purposes of paragraph (a)(1)(ii) of this section, the credit allowed shall be computed by taking into account only the total number of deductions for personal exemptions to which the individual is entitled under section 151 (b) and (e) for the period of his residence in the United States. For purposes of paragraph (a)(2)(ii) of this section, the credit allowed shall be computed by taking into account only the total number of deductions for personal exemptions to which the individual is entitled under section 151 for the period of his residence in the United States. See § 1.871-13 for rules relating to changes of residence status during a taxable year.

(e) *Limitation*—(1) *For taxable years ending after December 31, 1975, and beginning before January 1, 1977.* For taxable years ending after December 31, 1975, and beginning before January 1, 1977, the credit allowed by section 42 and this section shall not exceed the amount of tax imposed by chapter 1 for the taxable year. In the case of an alien individual who is a resident of the United States for a part of the taxable year, the credit allowed by section 42 and this section shall not exceed the amount of tax imposed by chapter 1 for that portion of the taxable year during which the alien individual was a resident of the United States. See § 1.871-13.

(2) *For taxable years beginning after December 31, 1976, and ending before January 1, 1979.* For taxable years beginning after December 31, 1976, and ending before January 1, 1979, the credit allowed by section 42 and this section shall not exceed the amount of tax imposed by section 1, or the amount of tax imposed in lieu of the tax imposed by section 1, for the taxable year. In the case of an alien individual who is a resident of the United States for a part of the taxable year, the credit allowed by section 42 and this section shall not exceed the amount of tax imposed by section 1, or the amount of tax imposed in lieu of

the tax imposed by section 1, for that portion of the taxable year during which the alien individual was a resident of the United States. See § 1.871-13.

(f) *Application with other credits.* In determining the credits allowed under—

(1) Section 33 (relating to foreign tax credit),

(2) Section 37 (relating to credit for the elderly),

(3) Section 38 (relating to investment in certain depreciable property),

(4) Section 40 (relating to expenses of work incentive programs), and

(5) Section 41 (relating to contributions to candidates for public office),

the tax imposed for the taxable year shall first be reduced (before any other reduction) by the credit allowed by section 42 and this section for the taxable year.

(g) *Income tax tables to reflect credit.* The tables prescribed under section 3 shall reflect the credit allowed by section 42 and this section.

(h) *Effective dates.* The credit allowed by section 42 and this section applies only for taxable years ending after December 31, 1975, and before January 1, 1979.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: April 12, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[FR Doc. 78-12494 Filed 5-5-78; 8:45 am]

[4830-01]

[T.D. 7544]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Exclusion of Disability Income Payments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document amends the temporary regulations relating to the exclusion of certain disability income payments received in taxable years beginning on or after January 1, 1977. Changes to the applicable tax law were made by the Tax Reform Act of 1976 and the Tax Reduction and Simplification Act of 1977. These regulations provide guidance to taxpayers and their physicians, and affect taxpayers who receive disability income payments.

EFFECTIVE DATE: The regulations are generally effective for taxable years beginning on or after January 1, 1977.

FOR FURTHER INFORMATION CONTACT:

John H. Parcell of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document amends the Temporary Regulations under the Tax Reform Act of 1976 (26 CFR Part 7) to reflect the amendment of section 105 (d) of the Internal Revenue Code of 1954 by section 505 of the Tax Reform Act of 1976 (90 Stat. 1566), as amended by section 301 of the Tax Reduction and Simplification Act of 1977 (91 Stat. 151). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

In general, section 505 of the Tax Reform Act of 1976 repealed the prior sick pay exclusion and substituted a new disability income exclusion of $100 a week. This exclusion is available only to taxpayers under age 65 who have retired on disability and are permanently and totally disabled. In addition, the exclusion is reduced dollar-for-dollar by adjusted gross income (including disability income) in excess of $15,000. The Act also specified circumstances in which certain taxpayers could begin to recover their pension or annuity costs.

CHANGE IN EFFECTIVE DATE

The changes made by section 505 of the Tax Reform Act of 1976, as originally enacted, applied to taxable years beginning on or after January 1, 1976. Section 301 of the Tax Reduction and Simplification Act of 1977 delayed the effective date of most of these changes for one year. Thus, the new disability income exclusion applies only to taxable years beginning on or after January 1, 1977. However, certain taxpayers were still permitted to begin recovering their pension or annuity costs in taxable years beginning in 1976. These amendments modify § 7.105-1 to reflect these changes in the effective date.

PHYSICIAN'S CERTIFICATE

Under § 7.105-1, a taxpayer claiming the disability income exclusion must attach to his or her return a certificate from a qualified physician attesting to his or her permanent and total disability. This section also requires that the certificate contain an acknowledgment that the physician understands that the certificate will be used by the taxpayer to claim the exclusion for permanent and total disability on his or her income tax return. These amendments delete the requirement that the physician's certificate include this acknowledgment.

SUBSTANTIAL GAINFUL ACTIVITY

Section 105(d)(5) provides that a taxpayer is permanently and totally disabled if he is unable to engage in any substantial gainful activity by reason of a physical or mental impairment that satisfies certain requirements. However, neither section 105(d) nor § 7.105-1 defines substantial gainful activity. These amendments provide a definition of substantial gainful activity and examples of the application of this definition in specific factual situations.

DRAFTING INFORMATION

The principal author of these regulations was John H. Parcell of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7) are amended as follows:

INCOME TAX REGULATIONS

(26 CFR PART 7)

§ 7.105-1 [Amended]

PARAGRAPH 1. Section 7.105-1 is changed as follows:

1. A-2 is revised to read as follows:

A-2: The disability income exclusion and related annuity provisions of the Tax Reform Act of 1976 are effective for taxable years beginning on or after January 1, 1977. In addition, the Tax Reduction and Simplification Act of 1977 allows certain taxpayers to begin excluding pension or annuity costs in taxable years beginning in 1976. In the case of a retiree who uses the cash receipts and disbursements method of accounting, the new law applies to payments received on or after the effective date even if the payment is for a period before the effective date. Thus, a payment for December 1976 that is received in January 1977 by a calendar-year, cash-basis taxpayer is controlled by the new law.

2. A-4 (3) is revised by substituting "1977" for "1976".

3. A-4 (4) is revised by deleting the phrase "before January 1, 1976, was permanently and totally disabled on January 1, 1976", and substituting in its place, "before January 1, 1977, was

permanently and totally disabled on January 1, 1976 or January 1, 1977".

4. A-9 is revised by substituting "1978" for "1977" and "1977" for "1976".

5. The following sentence is added at the end of A-11:

A-11: * * * See § 7.105-2 for additional information relating to substantial gainful activity.

6. A-13 is revised to read as follows:

A-13: If retired on disability before January 1, 1977: A certificate from a qualified physician attesting that—

(a) The taxpayer was permanently and totally disabled on January 1, 1976 or January 1, 1977; or

(b) The records of the Veterans Administration show that the taxpayer was permanently and totally disabled as defined in 38 CFR 3.340 or 3.342 on January 1, 1976 or January 1, 1977.

If retired on disability during 1977 or thereafter: A certificate from a qualified physician attesting that—

(a) The taxpayer was permanently and totally disabled on the date he or she retired; or

(b) The records of the Veterans Administration show that the taxpayer was permanently and totally disabled as defined in 38 CFR 3.340 or 3.342 on the date he or she retired.

In either case, the taxpayer must attach the certificate or a copy of the certificate to his or her income tax return. The certificate shall give the physician's name and address. No certificate from any employer is required with regard to the determination of permanent and total disability.

7. Q-20 and A-20 are revised to read as follows:

Q-20: Did the changes made by the Tax Reduction and Simplification Act provide any relief to taxpayers eligible for the sick pay exclusion in taxable years beginning in 1976?

A-20: Yes. As originally enacted, the more restrictive provisions of the disability income exclusion applied to taxable years beginning in 1976. The Tax Reduction and Simplification Act postponed the effective date of these provisions for 1 year. Thus, taxpayers may claim the sick pay exclusion in taxable years beginning in 1976.

PAR. 2. The following § 7.105-2 is inserted after § 7.105-1:

§ 7.105-2 Substantial gainful activity.

(a) *Purpose.* This section defines substantial gainful activity for purposes of section 105(d) and § 7.105-1, prescribes rules for determining whether a taxpayer has the ability to engage in substantial gainful activity, and provides examples of the application of the definition and rules in specific factual situations.

(b) *Definition.* Substantial gainful activity is the performance of significant duties over a reasonable period of time in work for remuneration or profit (or in work of a type generally performed for remuneration or profit).

(c) *General rules.* (1) Full-time work under competitive circumstances generally indicates ability to engage in substantial gainful activity.

(2) Work performed in self-care or the taxpayer's own household tasks, and nonremunerative work performed in connection with hobbies, institutional therapy or training, school attendance, clubs, social programs, and similar activities is not substantial gainful activity. However, the nature of the work performed may be evidence of ability to engage in substantial gainful activity.

(3) The fact that a taxpayer is unemployed for any length of time is not, of itself, conclusive evidence of inability to engage in substantial gainful activity.

(4) Regular performance of duties by a taxpayer in a full-time, competitive work situation at a rate of pay at or above the minimum wage will conclusively establish the taxpayer's ability to engage in substantial gainful activity. For purposes of paragraphs (c)(4) and (c)(5) of this section, the minimum wage is the minimum wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 206(a)(1).

(5) Regular performance of duties by a taxpayer in a part-time, competitive work situation at a rate of pay at or above the minimum wage will conclusively establish the taxpayer's ability to engage in substantial gainful activity, if the duties are performed at the employer's convenience.

(6) In situations other than those described in paragraphs (c)(4) and (c)(5) of this section, other factors, such as the nature of the duties performed, may establish a taxpayer's ability to engage in substantial gainful activity.

(d) *Examples.* The following examples illustrate the application of the definition in paragraph (b) of this section and the rules in paragraph (c) of this section in specific factual situations. In examples 1 through 5, the facts establish that the taxpayers are able to engage in substantial gainful activity and, therefore, are not entitled to claim the disability income exclusion of section 105(d). In examples 6 through 9, the facts do not, of themselves, establish the taxpayers' ability or inability to engage in substantial gainful activity. In these situations, all the facts and circumstances must be examined to determine whether the taxpayers are able to engage in substantial gainful activity.

Example (1). Before retirement on disability, taxpayer worked for a hotel as night desk clerk. After retirement, the taxpayer is hired by another hotel as night desk clerk at a rate of pay exceeding the minimum wage. Since the taxpayer regularly performs duties in a full-time competitive work situation at a rate of pay at or above the minimum wage, he or she is able to engage in substantial gainful activity.

Example (2). A taxpayer who retired on disability from employment as a sales clerk is employed as a full-time babysitter at a rate of pay equal to the minimum wage. Since the taxpayer regularly performs duties in a full-time, competitive work situation at a rate of pay at or above the minimum wage, he or she is able to engage in substantial gainful activity.

Example (3). A taxpayer retired on disability from employment as a teacher because of terminal cancer. The taxpayer's physician recommended continuing employment for therapeutic reasons and taxpayer accepted employment as a part-time teacher at a rate of pay in excess of the minimum wage. The part-time teaching work is done at the employer's convenience. Even though the taxpayer's illness is terminal, the employment was recommended for therapeutic reasons, and the work is part-time, the fact that the work is done at the employer's convenience demonstrates that the taxpayer is able to engage in substantial gainful activity.

Example (4). A taxpayer who retired on disability, is employed full-time in a competitive work situation that is less demanding than his or her former position. The rate of pay exceeds the minimum wage but is about half of the taxpayer's rate of pay in the former position. It is immaterial that the new work activity is less demanding or less gainful than the work in which the taxpayer was engaged before his or her retirement on disability. Since the taxpayer regularly performs duties in a full-time, competitive work situation at a rate of pay at or above the minimum wage, he or she is able to engage in substantial gainful activity.

Example (5). A taxpayer who retired on disability from employment as a bookkeeper drives trucks for a charitable organization at the taxpayer's convenience. The taxpayer receives no compensation, but duties of this nature generally are performed for remuneration or profit. Some weeks the taxpayer works 10 hours, some weeks 40 hours, and over the year the taxpayer works an average of 20 hours per week. Even though the taxpayer receives no compensation, works part-time, and at his or her convenience, the nature of the duties performed and the average number of hours worked per week conclusively establish the taxpayer's ability to engage in substantial gainful activity.

Example (6). A taxpayer who retired on disability was instructed by a doctor that uninterrupted bedrest was vital to the treatment of his or her disability. However, because of financial need, the taxpayer secured new employment in a sedentary job. After attempting the new employment for approximately two months, the taxpayer was physically unable to continue the employment. The fact that the taxpayer attempted to work and did, in fact, work for two months, does not, of itself, conclusively establish the taxpayer's ability to engage in substantial gainful activity.

Example (7). A taxpayer who retired on disability accepted employment with a

former employer on a trial basis. The purpose of the employment was to determine whether the taxpayer was employable. The trial period continued for an extended period of time and the taxpayer was paid at a rate equal to the minimum wage. However, because of the taxpayer's disability only light duties of a nonproductive make-work nature were assigned. Unless the activity is both substantial and gainful, the taxpayer is not engaged in substantial gainful activity. The activity was gainful because the taxpayer was paid at a rate at or above the minimum wage. However, the activity was not substantial because the duties were of a nonproductive, make-work nature. Accordingly, these facts do not, of themselves, establish the taxpayer's ability to engage in substantial gainful activity.

Example (8). A taxpayer who retired on disability from employment as a bookkeeper lives with a relative who manages several motel units. The taxpayer assisted the relative for one or two hours a day by performing duties such as washing dishes, answering phones, registering guests, and bookkeeping. The taxpayer can select the times during the day when he or she feels most fit to perform the tasks undertaken. Work of this nature, performed off and on during the day at the taxpayer's convenience, is not activity of a "substantial and gainful" nature even if the individual is paid for the work. The performance of these duties does not, of itself, show that the taxpayer is able to engage in substantial gainful activity.

Example (9). A taxpayer who retired on disability because of a physical or mental impairment accepts sheltered employment in a protected environment under an institutional program. Sheltered employment is offered in sheltered workshops, hospitals and similar institutions, homebound programs, and Veterans Administration domiciliaries. Typically, earnings are lower in sheltered employment than in commercial employment. Consequently, impaired workers normally do not seek sheltered employment if other employment is available. The acceptance of sheltered employment by an impaired taxpayer does not necessarily establish his or her ability to engage in substantial gainful activity.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation of 5 U.S.C. 553(d).

This Treasury decision is issued under the authority contained in sections 105(d) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1566; 68A Stat. 917; 26 U.S.C. 105(d); 7805).

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: April 21, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[FR Doc. 78-12490 Filed 5-3-78; 4:47 pm]

[4830-01]

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 7546]

PART 420—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Temporary Regulations relating to disclosures of Returns and Return Information for Purposes of Administering Titles I and IV of the Employee Retirement Income Security Act of 1974

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides amendments to the temporary regulations on procedure and administration (26 CFR Part 420) under the Employee Income Security Retirement Act of 1974, Pub. L. 93-406 (hereinafter referred to as "ERISA"), relating to disclosures of tax returns and tax return information for purposes of administering titles I and IV of ERISA as authorized by section 6103(*l*)(2) of the Internal Revenue Code. The amendments to the regulations would provide personnel of the Internal Revenue Service, the Department of Labor, the Justice Department, and the Pension Benefit Guaranty Corporation with guidance needed to comply with section 6103(*l*)(2) of the Code and would affect disclosures of tax returns and tax return information made after January 1, 1977.

EFFECTIVE DATE: January 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Diane L. Renfroe of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3459, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 1022(h) of ERISA added section 6103(g) to the Internal Revenue Code relating to disclosure of information with respect to deferred compensation plans, and temporary regulations under section 6103(g) were published in 1974 and 1975. Section 1202 of the Tax Reform Act of 1976 (Pub. L. 94-455) amended section 6103, effective January 1, 1977. As amended, section 6103(*l*)(2) now provides the disclosure authority formerly provided by section 6103(g)(1).

These amendments to the temporary regulations conform the regulations to the amendments to section 6103 made by section 1202 of the Tax Reform Act of 1976 and provide additional rules regarding disclosures of returns and return information to and by officers and employees of the Department of Labor, the Pension Benefit Guaranty Corporation, and the Department of Justice for purposes of administering titles I and IV of ERISA.

DRAFTING INFORMATION

The principal author of this regulation was Karl P. Fryzel of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE TEMPORARY REGULATIONS

Accordingly, 26 CFR Part 420 is amended as follows:

PARAGRAPH 1. Section 420.6103(g)-1 is redesignated § 420.6103(*l*)(2)-1 and amended as follows:

§ 420.6103(*l*)(2)-1 Disclosure of returns and return information to Pension Benefit Guaranty Corporation for purposes of research and studies.

(a) *General rule.* Pursuant to the provisions of section 6103(*l*)(2) of the Internal Revenue Code of 1954 and subject to the requirements of paragraph (b) of this section, officers and employees of the Internal Revenue Service may disclose returns and return information (as defined by section 6103(b)) to officers and employees of the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, conducting research and studies authorized by title IV of the Employee Retirement Income Security Act of 1974.

(b) *Procedures and restrictions.* Disclosure of returns or return information by officers or employees of the Internal Revenue Service as provided by paragraph (a) of this section will be made only upon written request to the Commissioner of Internal Revenue by the Executive Director of the Pension Benefit Guaranty Corporation describing the returns or return information to be disclosed, the taxable period or date to which such returns or return information relates, and the purpose for which the returns or return information is needed in the administration of title IV of the Employee Retirement Income Security Act of 1974, and designating by title the officers and employees of such corporation to whom such disclosure is authorized. No such officer or employee to whom returns or return information is disclosed pursuant to the provisions of paragraph (a) shall disclose such returns or return information to any person, other than the taxpayer by

whom the return was made or to whom the return information relates or other officers or employees of such corporation whose duties or responsibilities require such disclosure for a purpose described in paragraph (a), except in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

PAR. 2. Section 420.6103(g)-2 is redesignated § 420.6103(*l*)(2)-2 and amended to read as follows:

§ 420.6103(*l*)(2)-2 Disclosure of returns and return information to Department of Labor for purposes of research and studies.

(a) *General rule.* Pursuant to the provisions of section 6103(*l*)(2) of the Internal Revenue Code of 1954 and subject to the requirements of paragraph (b) of this section, officers or employees of the Internal Revenue Service may disclose returns and return information (as defined by section 6103(b)) to officers and employees of the Department of Labor for purposes of, but only to the extent necessary in, conducting research and studies authorized by section 513 of the Employee Retirement Income Security Act of 1974.

(b) *Procedures and restrictions.* Disclosure of returns or return information by officers or employees of the Internal Revenue Service as provided by paragraph (a) of this section will be made only upon written request to the Commissioner of Internal Revenue by the Administrator of the Pension and Welfare Benefit Programs of the Department of Labor describing the returns or return information to be disclosed, the taxable period or date to which such returns or return information relates, and the purpose for which the returns or return information is needed in the administration of title I of the Employee Retirement Income Security Act of 1974, and designating by title the officers and employees of such department to whom such disclosure is authorized. No such officer or employee to whom returns or return information is disclosed pursuant to the provisions of paragraph (a) shall disclose such returns or return information to any person, other than the taxpayer by whom the return was made or to whom the return information relates or other officers or employees of such department whose duties or responsibilities require such disclosure for a purpose described in paragraph (a), except in a form which cannot be associated with, or otherwide identify, directly or indirectly, a particular taxpayer.

PAR. 3. Section 420.6103(g)-3 is redesignated § 420.6103(*l*)(2)-3 and amended to read as follows:

§ 420.6103(*l*)(2)-3 Disclosure to Department of Labor and Pension Benefit Guaranty Corporation of certain returns and return information.

(a) *Disclosures following general requests.* Pursuant to the provisions of section 6103(*l*)(2) and subject to the requirements of this paragraph, officers or employees of the Internal Revenue Service may disclose the following returns and return information (as defined by section 6103(b)) to officers and employees of the Department of Labor or the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, the administration of title I or IV of the Employee Retirement Income Security Act of 1974 (hereinafter referred to in this section as the Act)—

(1) Notification of receipt by the Service of an application by a particular taxpayer for a determination of whether a pension, profit-sharing, or stock bonus plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the applicable requirements of part I of subchapter D of chapter 1 of the Code;

(2) Notification that a particular application described in subparagraph (1) of this paragraph alleges that certain employees may be excluded from participation by reason of section 410(b)(2) (A) and (B) for the purpose of obtaining the finding necessary for the application of such section;

(3) An application by a particular taxpayer for a determination of whether a pension, profit-sharing, or stock bonus plan, or an annuity or bond purchase plan meets the applicable requirements of part I of subchapter D of chapter 1 of the Code with respect to a termination or proposed termination of the plan or to a partial termination or proposed partial termination of the plan, and any statement filed as provided by section 6058(b);

(4) Notification that the Service has determined that a plan or trust described in subparagraph (1) or (3) of this paragraph meets or does not meet the applicable requirements of part I of subchapter D of chapter 1 of the Code and has issued a determination letter to such effect to a particular taxpayer or that an application for such a determination has been withdrawn by the taxpayer;

(5) If the Department of Labor or the Pension Benefit Guaranty Corporation has commented on an application upon which a determination letter described in subparagraph (4) of this paragraph has been issued, a copy of the letter or document issued to the applicant;

(6) Notification to a particular taxpayer that the Service intends to disqualify a pension, profit-sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or bond purchase plan because such plan or trust does not meet the requirements of section 410(a) or 411 as of the date that such notification is issued;

(7) Notification required by section 3002(a) of the act of the commencement of any proceeding to determine whether a particular pension, profit-sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or bond purchase plan meets the requirements of section 410(a) or 411;

(8) Prior to issuance of a notice of deficiency to a particular taxpayer under section 6212, notification that the Service has determined that a deficiency exists under section 6211 with respect to the tax imposed by section 4971 (a) or (b) on such taxpayer, except that if the Service determines that the collection of such tax is in jeopardy within the meaning of section 6861(a), such notification will be disclosed only after issuance of the notice of deficiency or jeopardy assessment;

(9) Notification that the Service has waived the tax imposed by section 4971(b) on a particular taxpayer;

(10) Prior to issuance of a notice of deficiency to a particular taxpayer under section 6212, notification that a deficiency exists under section 6211 with respect to the tax imposed by section 4975 (a) or (b) on such taxpayer, except that if the Service determines that the collection of such tax is in jeopardy within the meaning of section 6861(a), such notification will be disclosed only after issuance of the notice of deficiency or jeopardy assessment;

(11) Notification that the Service has waived the tax imposed by section 4975(b) on a particular taxpayer;

(12) Notification of applicability of section 4975 to a particular pension, profit sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or stock purchase plan engaged in prohibited transactions within the meaning of section 4975(c);

(13) Notification to a plan administrator that the Service has determined that a pension, profit sharing, stock bonus, annity, or stock purchase plan no longer meets the requirements of section 401(a) or 404(a)(2);

(14) Notification that the Service has determined that there has been a termination or partial termination of a particular pension, profit-sharing, stock bonus, annuity, or stock purchase plan within the meaning of section 411(d)(3);

(15) Notification of the occurrence of an event (other than an event described in subparagraph (13), (14), or (18) of this paragraph) which the Service has determined to indicate that a particular pension, profit-sharing, stock bonus, annuity, or stock purchase plan may not be sound under section 4043(c)(2) of the act;

(16) Notification that the Service has received and responded to a request on behalf of a particular pension, profit-sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or stock purchase plan for an extension of time for filing an annual return by such plan or trust;

(17) Notification that the Service has received and responded to a request on behalf of a particular pension, profit-sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or stock purchase plan to change the annual accounting period of such plan or trust;

(18) Notification that the Service has determined that a particular plan does not meet the requirements of section 412 without regard to whether such plan is one described in section 4021(a)(2) of the Act;

(19) Notification of the results of an investigation by the Service requested by the Deartment of Labor or the Pension Benefit Guaranty Corporation, or both, with respect to whether the tax described in section 4971 should be imposed on any employer named in such request or whether the tax imposed by section 4975 should be paid by any person named in the request;

(20) Notification of receipt by the Service of an application by a particular taxpayer for exemption under section 4975(c)(2) or of initiation by the Service of an administrative proceeding for such exemption; and

(21) Notification of receipt by the Service of an application by or on behalf of a particular taxpayer for a waiver or variance of the minimum funding standard under section 303 of the Act or section 412(d).

Return information disclosed under this paragraph includes the taxpayer identity information (as defined in section 6103(b)(6)) of the plan or trust, the name and address of the sponsor and administrator of the plan or trustee of the trust, and the name and address of the person authorized to represent the plan or trust before the Internal Revenue Service. Disclosure of returns or return information as provided by this paragraph will be made only following receipt by the Commissioner of Internal Revenue of an annual written request for such disclosure by the Administrator of Pension and Benefit Welfare Programs of the Department of Labor or the Executive Director of the Pension Benefit Guaranty Corporation describing the categories of returns or return information to be disclosed by the Service and the particular purpose for which the returns of return information is needed in the administration of title I or IV of the Act, and designating by title the officers and employees of the Department of Labor or such corporation to whom such disclosure is authorized.

(b) *Additional returns and return information subject to disclosure*—(1) *Returns and return information relating to automatic notification.* Subject to the requirements of subparagraph (3) of this paragraph, officers or employees of the Internal Revenue Service may disclose to officers and employees of the Department of Labor or the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, the administration of title I or IV of the Act additional returns and return information to any item described in paragraph (a) of this section.

(2) *Other returns and return information.* Subject to the requirements of subparagraph (3) of this paragraph, officers or employees of the Internal Revenue Service may disclose to officers and employees of the Department of Labor or the Pension Benefit Guaranty Corporation returns and return information (other than returns and return information disclosed as provided by paragraph (a) of this section or § 420.6103(*l*)(2)-1 or § 420.6103 (*l*)(2)-2) for purposes of, but only to the extent necessary in, administration of title I or IV of the Act.

(3) *Procedures.* Disclosure of returns or return information by officers or employees of the Internal Revenue Service as provided by this paragraph will be made only upon written request to the Commissioner of Internal Revenue by the Administrator of Pension and Welfare Benefit Programs of the Department of Labor or his delegate or the Executive Director of the Pension Benefit Guaranty Corporation or his delegate identifying the particular taxpayer by whom such return was made or to whom such return information relates, describing the particular returns or return information to be disclosed, stating the purpose for which the returns or return information is needed in the administration of title I or IV of the Act, and designating by name and title the officers and employees of such department or corporation to whom such disclosure is authorized.

(c) *Disclosure and use of returns and return information by officers and employees of Department of Labor, Pension Benefit Guaranty Corporation, and Department of Justice*—(1) *Use by officers and employees of Department of Labor and Pension Benefit Guaranty Corporation.* Returns and return information disclosed to officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation as provided by this section may be used by such officers and employees for purposes of, but only to the extent necessary in, administration of any provision of title I or IV of the Act, including preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) authorized by, or described in, title I or IV of the Act.

(2) *Disclosure by officers and employees of Department of Labor and Pension Benefit Guaranty Corporation to, and use by, other persons, including officers and employees of the Department of Justice.* (i) Returns and return information disclosed to officers and employees of the Department of Labor or the Pension Benefit Guaranty Corporation as provided by this section may be disclosed by such officers and employees to attorneys of the Department of Justice (including United State attorneys) personally and directly engaged in, and for their necessary use in, preparation for any civil or criminal judicial proceeding (or for their necessary use in an investigation which may result in such a proceeding) authorized by, or described in, title I or IV or the Act.

(ii) Returns and return information disclosed to officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation and to attorneys of the Department of Justice as provided by this section may be disclosed by such officers, employees, and attorneys to other persons, including but not limited to, persons described in subparagraph (2)(iii) of this paragraph, but only to the extent necessary in connection with administration of the provisions of title I or IV of the Act, including proper preparation for a proceeding (or investigation) described in subparagraph (1) or (2)(i). Such disclosures may include, but are not limited to, disclosures where necessary—

(A) To properly obtain the services of persons having special knowledge or technical skills;

(B) To properly interview, consult, depose, or interrogate or otherwise obtain relevant information from, the taxpayer to whom such return or return information relates (or the legal representative of such taxpayer) or any witness who may be called to give evidence in the proceeding; or

(C) To properly conduct negotiations concerning, or obtain authorization for, settlement or disposition of the proceeding, in whole or in part, or stipulations of fact in connection with the proceeding.

Disclosure of a return or return information to a person other than the taxpayer to whom such return or return information relates (or the legal representative of such taxpayer) to properly prepare for a proceeding (or to properly conduct an investigation) described in this subparagraph should be made, however, only if such preparation (or investigation) cannot otherwise properly be accomplished without making such disclosure.

(iii) Among those persons to whom returns and return information may be disclosed by officers and employees

of the Department of Labor and the Pension Benefit Guaranty Corporation and by attorneys of the Department of Justice as provided by subparagraph (2)(ii) of this paragraph are:

(A) Other officers and employees (including attorneys) of the Department of Labor, the Pension Benefit Guaranty Corporation, and the Department of Justice;

(B) Officers and employees of another Federal agency (as defined in section 6103(b)(9)) working under the direction and control of such officers and employees of the Department of Labor, the Pension Benefit Guaranty Corporation, or the Department of Justice; and

(C) Court reporters.

Disclosure of returns or return information to other persons by officers and employees of the Department of Labor or the Pension Benefit Guaranty Corporation as provided by subparagraph (2)(ii) of this paragraph for purposes of conducting research, surveys, studies, and publications referred to in section 513(a), or authorized by title IV, of the Act shall be restricted, however, to disclosure to other officers and employees of such department or corporation to whom such disclosure is necessary in connection with such conduct or to the taxpayer by whom such return was made or to whom such return information relates if the return or return information can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(3) *Disclosure in judicial proceedings.* A return or return information disclosed to officers and employees (including attorneys) of the Department of Labor, the Pension Benefit Guaranty Corporation, or the Department of Justice as provided by this section may be disclosed by such officers or employees in a civil or criminal judicial proceeding authorized by, or described in, title I or IV of the Act. *Provided,* That, in the case of a judicial proceeding described in section 6103(i)(4), the requirements of section 6103(i)(4) have first been met.

(d) *Disclosure of returns and return information in connection with certain consultations between Departments of the Treasury and Labor.* Upon general written request to the Commissioner of Internal Revenue by the Secretary of Labor, officers and employees of the Internal Revenue Service may disclose to officers and employees of the Department of Labor such returns and return information as may be necessary to properly carry out any consultation required by sections 3002, 3003, or 3004 of the Act.

(e) *Return information open to public inspection under section 6104.* Nothing in these regulations shall be construed to deny officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation the right to inspect return information available to the public under section 6104.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(This Treasury decision is issued under the authority contained in sections 6103(q) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1685, 68A Stat. 917; 26 U.S.C. 6103(q), 7805).)

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: April 12, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[FR Doc. 78-12491 Filed 5-3-78; 4:47 pm]

[6820-12]

Title 29—Labor

CHAPTER XXVII—FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PART 2700—PROCEDURAL RULES

Interim Rule

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Interim rule.

SUMMARY: On March 10, 1978, (43 FR 10320) the Federal Mine Safety and Health Review Commission published its interim procedural rules for proceedings arising under the Federal Mine Safety and Health Act of 1977. Section 2700.57 of those rules dealt with the disposition of appeals pending before the Interior Board of Mine Operations Appeals. The rule provided the parties in those pending cases the opportunity to seek review before the Commission by May 8, 1978. The rule further provided that the Commission could order review on its own motion by the same date. Since the members of the Commission have not yet taken office, this amendment preserves the right of the Commission to order review on its own motion. It also preserves the right to discretionary review for those parties who have filed petitions for review by May 8, 1978.

EFFECTIVE DATE: May 8, 1978.

ADDRESS: Federal Mine Safety and Health Review Commission, 4015 Wilson Boulevard, Arlington, Va. 22203.

FOR FURTHER INFORMATION CONTACT:

James A. Broderick, Acting Chief Administrative Law Judge, Federal Mine Safety and Health Review Commission, 4015 Wilson Boulevard, Arlington, Va. 22203, phone number 703-235-2660.

JAMES A. BRODERICK,
Acting Chief Administrative Law Judge, Federal Mine Safety and Health Review, Commission.

This rule is officially adopted as an interim rule pursuant to section 113(d)(2) of the Federal Mine Safety and Health Act of 1977, 83 Stat. 742, 30 U.S.C. 801-960, Pub. L. 95-164, November 9, 1977, and the determination order of March 9, 1978, of the Director of the Office of Management and Budget. Notice of proposed rulemaking is not required inasmuch as these rules of agency procedure and practice are exempted under 5 U.S.C. 553(b)(A).

Section 2700.57 is amended to read as follows:

§ 2700.57 Pending appeals before the Interior Board of Mine Operations Appeals.

With regard to any appeal pending before the Interior Department Board of Mine Operations Appeals as of March 8, 1978, and reviewable by the Commission after that date, the appellant shall have 60 days from March 9, 1978, to petition the Commission for discretionary review under § 2700.58 of these rules. Unless review is ordered by the Commission within 30 days after the date that a majority of the members of the Commission take office, the decision appealed to the Interior Department Board of Mine Operations Appeals shall become the final decision of the Commission.

[FR Doc. 78-12563 Filed 5-5-78; 8:45 am]

[3710-92]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

[ER 1130-2-306]

PART 209—ADMINISTRATIVE PROCEDURES

Navigation Lights, Aids To Navigation, Navigation Charts and Related Data

Policy, Practice and Procedures

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

ACTION: Final rule.

SUMMARY: This regulation prescribes the policy, practice and proce-

dures to be used by all Corps of Engineers installations and activities in connection with aids to navigation, chart data, and publication of information on Civil Works activities. The prescribed policy and procedure addresses necessary coordination with the U.S. Coast Guard, Defense Mapping Agency, National Ocean Survey and the U.S. Naval Oceanographic Office.

EFFECTIVE DATE: May 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Lyle Hanson, Construction Operations Division, Civil Works Directorate, Office of the Chief of Engineers, Washington, D.C. 20314, 202-693-6995.

SUPPLEMENTARY INFORMATION: This regulation is an update of ER 1130-2-306 last issued 17 October 1966 to all Corps of Engineers installations having Civil Works activities. This revised regulation modifies previous reporting procedures, lists the new agencies that are involved in navigation charts, surveys in navigable waters, and pertinent information that has a bearing on navigation interests. This regulation is strictly administrative procedures to be used by Corps District Engineers and as such is being published as a final rule.

This amendment revises § 209.325. See last paragraph (i) of the new rule with regard to availability of maps and charts. Accordingly, 33 CFR 209.325 is revised as set forth below:

§ 209.325 Navigation lights, aids to navigation, navigation charts, and related data policy, practices and procedure.

(a) *Purpose.* This regulation prescribes the policy, practice and procedure to be used by all Corps of Engineers installations and activities in connection with aids to navigation, chart data, and publication of information on Civil Works activities.

(b) This regulation will be applied by all elements of the Corps of Engineers with Civil Works responsibilities.

(c) *Reference.* Pub. L. 85-480, Publication Authority (72 Stat. 279).

(d) *Cooperation with Coast Guard.* (1) District Engineers will consult with the Coast Guard District Commander during design of channel and harbor improvement projects to discuss the aids to navigation requirements and all other facets of the projects that involve Coast Guard responsibility. Project material furnished direct to Coast Guard Commanders will include: (1) Information as to the authorization by Congress of a project involving changes affecting aids, such as channel limits, breakwaters, including a copy of the project document; (2) The proposed operations on such projects during the next fiscal year, to be furnished annually on the release of the budget estimates; (3) Plans showing the final location of the channel limits or structures to be furnished at the time work is undertaken.

(2) Changes in channel limits affecting navigation aids, made under general or specific provisions of the law, should be made the subject of a conference with the Coast Guard District Commander. He will be promptly informed as to the approval of such changes and the probable date of completion of the work.

(3) District Engineers will furnish direct to the various Coast Guard District Commanders, for their immediate information, any facts which may come to their attention in connection with their duties which will be of benefit to the Coast Guard in maintaining its system of aids to navigation. This should include statements as to the displacement of or defects in any such aids to navigation.

(4) If work involving harbor or channel improvements directly affects any existing aids to navigation or any structures of the Coast Guard, Districts Engineers will, when practicable, give notice to the Coast Guard District Commander sufficiently in advance to permit taking such steps as may be deemed necessary by the Coast Guard. If the Coast Guard District Commander specifically requests that the affected structure be replaced, the District Engineer will inform him of the estimated cost and will proceed with the work if so authorized by the Chief of Engineers. On completion of the work, the District Engineer will promptly furnish the Coast Guard District Commander, for settlement, an account of the expense incurred.

(e) *Navigation Aids of the Corps of Engineers.* (1) Whenever channel dredging or other channel improvements are being performed, necessary temporary markers, such as ranges and light poles, should be installed and maintained by the District Engineer pending the installation of permanent aids by the Coast Guard. The Coast Guard desires that information regarding aids to navigation installed or maintained by District Engineers in connection with harbor or channel improvement be furnished promptly. Such information is needed for inclusion in Notice to Mariners as published by the Coast Guard, and where desirable on the charts of the waters concerned.

(2) District Engineers will notify the Coast Guard District Commander in every case where aids to navigation for marking works of harbor or channel improvements are established or discontinued. Notice should be given of such aids as may be of use or interest to general navigation. Notice need not be given as to such buoys, lights, or fog signals as are of temporary or unimportant character, or of importance only to the Corps of Engineers. Omit also lights or fog signals on ferry slips and on piers used only by certain vessels, and stakes, bushes, and barrel buoys marking shallow and little-used channels.

(3) In placing aids to navigation in connection with harbor or channel improvement works, District Engineers should see that they do not conflict in character or otherwise with other aids to navigation in the vicinity. District Engineers should confer with the Coast Guard District Commander on this subject.

(4) The necessary blank forms for reporting information regarding Corps of Engineers aids will be furnished upon request by the Coast Guard District Commander.

(5) It is essential that the Coast Guard by furnished with information for publication concerning markers installed by the Corps of Engineers as temporary aids to navigation, for new improvements, in advance of permanent aids, and also concerning other markers that may be established in connection with Corps of Engineers operations that may also serve as important aids to navigation. Care will be exercised to see that all markers established are not misleading to general navigation and do not interfere with aids to navigation estabished by the Coast Guard.

(f) *Colors of Dredging Buoys Established by Corps of Engineers.*

(1) In order to distinguish buoys placed and maintained by the Corps of Engineers for dredging purposes from aids to navigation placed by the Coast Guard, Corps buoys will be painted white with the top 2 feet painted light green.

(2) If buoys with special markings are needed to indicate the different sides of the navigable channel, prior arrangements will be made with the Coast Guard District Commander having jurisdiction.

(g) *Information to be Furnished by the Corps of Engineers.*

(1) District Engineers responsible for harbors and waterways shown on charts of the National Ocean Survey (NOAA), will report the channel conditions promptly, using standard tabular forms, to:

Director, Defense Mapping Agency, ATTN: Hydrographic Center, Washington, D.C. 20390.

National Oceanic and Atmospheric Administration, ATTN: National Ocean Survey C-32, Rockville, Md. 20852.

Commandant and District Commanders, U.S. Coast Guard.

(2) Channel survey drawings furnished to the Coast Guard are to include:

(i) Either NAD 27 or State Plane grids.

(ii) Plots of the positions of aids to navigation.

(iii) Written notations of the coordinates in NAD 27 or State Plane Coordinates of the fixed aids to navigation found during the survey.

(3) The standard tabular forms with illustrated data follow:

(i) For channels 400 feet wide and greater (ENG Form 4020-R).

_____HARBOR, _____(State)					Minimum depth in each 1/4 width of channel entering from seaward			
					Mid-channel			
Name of Channel	Date Survey	Project			Left outside quarter feet	Left inside quarter feet	Right inside quarter feet	Right outside quarter feet
		Feet width	Miles length	Feet depth				
Tybee Range--------	3-78	500	1.64	30	30	31	28	23
Bloody Point-------	3-78	500	2.81	30	30	30	29	25

(ii) For channels 100 to 400 feet wide (ENG Form 4021-R).

_____HARBOR, _____(State)

Name of Channel	Date Survey	Project			Minimum depths in channel entering from seaward: Left outside quarter feet	Mid-channel for half project width feet	Right outside quarter feet
		Feet width	Miles length	Feet depth			
Kings Island Channel	3-78	300	1.14	26	24	23	26
Whitehall Channel---	3-78	200	1.81	26	27	26	25

ENG FORM 4021-R(Jul 59)

(iii) For channels less than 100 feet in width, report controlling depths only based on at least 80 percent of project width, 40 percent on either side of centerline. (The submission of tabular forms is not required for channels having a project depth less than 10 feet except coastal inlets and harbors of refuge.)

(4) The tabulations of depths should be amplified by footnotes or otherwise to show clearly and definitely the location of controlling shoals, tendency of shoals to recur, and all other critical information of special value and importance for safe navigation of the channel. Reaches of channel not presently named should be identified in the tabular form by reference to chartered aids or features, or assigned identifying names, numbers or letters. For localized irregular project areas where the application of the tabular form would not be practical, the controlling depth based on a safe navigable width will be described as well as unusual or critical conditions of shoaling.

(5) The prompt dissemination of the latest detailed information concerning channel conditions is of utmost importance, and necessary measures will be taken to insure that such information is reported without delay simultaneously to the U.S. Naval Oceanographic Office, the Coast Guard, the National Ocean Survey and Defense Mapping Agency. When a dangerous shoaling is found during the progress of a survey, information thereon will be furnished immediately to the above-mentioned agencies, so that such information may be made available to mariners promptly, and buoys shifted to mark the shoal. Descriptions of any dredging or other operations in important channels in tidal waters—either in progress and not al-

ready reported, or soon to be undertaken—together with a statement of the work and expected duration, will also be reported in order that Naval and other vessels may be warned to look out for dredges and other plant, temporary markers and lights.

(6) District Engineers having charge of improvements of harbors and waterways shown on charts of the Defense Mapping Agency or of the National Ocean Survey will send to both offices promptly, as ascertained for the correction of such charts, the following information: Descriptions of changes in channel location and depth, or of obstructions that may be discovered, with such prints and other information as may be necessary to permit the existing charts to be corrected to date. All maps should contain sufficient data to permit the fixed plane or reference, bench marks, base lines, etc., to be determined and located. The survey stations should be shown and, when no unreasonable expenditure of time or labor is involved, the map will show one or more triangulation station(s) of the National Ocean Survey in such a way as to facilitate connection of old or new work. The source of authority for the shoreline and topography should be stated on the map. The data supplied should indicate what charts are affected.

(7) When any survey of areas covered by charts of the Defense Mapping Agency or the National Ocean Survey is completed, a print of each tracing will be sent direct to both the Defense Mapping Agency and the National Ocean Survey. It is not necessary that tracings be fully complete as to form and title when such prints are made. An informal manuscript title marked "Advance Sheets", and containing a description sufficient to identify the locality and to identify the source of the map, will be sufficient.

(8) Information relative to the improvement of harbors and waterways such as dredging operations, and precautions rendered necessary due to the presence of dredging or other plant will, when considered necessary, be brought to the attention of vessel owners or operators regularly using the waterway. This will be done through issuing bulletins or notices by District Engineers.

(h) *Special Reports.* Changes affecting navigation will be made promptly whenever information of immediate concern to navigation becomes known. Items of information especially desired are channel conditions as revealed by surveys, changes in channel conditions, either by natural causes or by dredging or other work, changes in approved projects for improvement with statements of results expected from proposed operations, descriptions of proposed dredging or other Federal work of improvement such as breakwater, pier, and revetment construction or alterations, descriptions of proposed or completed municipal or private improvements in or affecting navigable waters. Additional items of information desired are descriptions of wrecks, uncharted shoals, and other obstructions to navigation and particulars as to proposed or completed removal of same, changes in buoys or lights, erection of new, or changes in existing bridges, new or revised Federal or local rules and regulations for harbors and channels, and establishment or existence of danger areas in navigable waters. Reproductions of drawings or sketches which will be helpful in interpreting the data shall accompany the reports. The reports will not be limited to a reference to an accompanying drawing or sketch, but will contain a complete description in form suitable for publication in notices to mariners and the monthly supplements to the U.S. Coast Pilot. In this respect, the reports will provide enough information that a single notification to navigational interests will suffice. In the case of dredging or construction work, the bare statement that work will commence or has commenced on a certain date is insufficient. All additional information possible, such as probable duration of operations and object of work, will be given—the latter in the case of dredging being such data as the area to be covered and the depth expected to be provided. The reports required by this paragraph will be identified by reference to the appropriate Engineer Manual or regulation and will be numbered consecutively by each District during the calendar year, starting with number 1 at the beginning of each year.

(i) *Information Pamphlets, Maps, Brochures and Other Material.*

(1) Pub. L. 85-480, approved 2 July 1958, authorizes the Chief of Engineers to publish information pamphlets, maps, brochures, and other material on river and harbor, flood control, and other Civil Works activities, including related public park and recreation facilities under his jurisdiction, as he may deem to be of value to the general public.

(2) This Public Law authorizes the Chief of Engineers to provide for the sale of any of the material prepared under authority of the act—and of publications, charts, or other material prepared under his direction pursuant to other legislative authorization or appropriation, and to charge therefor a sum of not less than the cost of reproduction.

(3) District Engineers are authorized to publish the material covered in paragraph 8a above, and to sell such material. Except for material specifically prepared for free distribution to the general public, the charges for such other published information will be not less than the cost of its reproduction.

(4) Condition survey maps or charts, sold or otherwise distributed to the public, showing depths will specifically state the date or dates that the surveys were made. They shall also have the following notation printed or stamped thereon:

"The information depicted on this map represents the results of surveys made on the dates indicated and can only be considered as indicating the general conditions existing at that time."

For the Chief of Engineers:

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

[FR Doc. 78-12414 Filed 5-5-78; 8:45 am]

[6730-01]

Title 46—Shipping

CHAPTER IV—FEDERAL MARITIME COMMISSION

SUBCHAPTER A—GENERAL PROVISIONS

[General Order No. 16, Amdt. 22; Docket No. 77-40]

PART 502—RULES OF PRACTICE AND PROCEDURE

Miscellaneous Amendments

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: Rules of Practice and Procedure are amended to require that service of subpenas and discovery requests or motions directed against Commission staff personnel be served on the Secretary of the Commission; to authorize the General Counsel to appoint an attorney to represent Commission staff personnel who are involved; to permit rulings of the presiding officer to be appealed and to be reviewed by the Commission absent appeal in such matters; and to permit parties to file replies to appeals generally. The amendments are necessary because the present rules governing subpena and discovery procedures are inconsistent and unclear and do not give the Commission an opportunity to rule upon matters affecting disclosure of its own records. Furthermore, the present rule governing appeals to the Commission does not provide for replies to such appeals.

EFFECTIVE DATE: May 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, Feder-

al Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, 202-523-5725.

SUPPLEMENTARY INFORMATION: The Commission instituted this proceeding by Notice of Proposed Rulemaking published in the FEDERAL REGISTER on August 10, 1977 (42 FR 40452) to amend Rules 135, 209, and 153 of its rules of practice and procedure (46 CFR 502.135, 46 CFR 502.209, and 46 CFR 502.153). The purpose of these amendments was fully explained in the Notice cited above. The Maritime Administrative Bar Association (MABA) submitted initial and supplemental comments. A discussion of the rules and comments follows.

1. Rule 135, 46 CFR 502.135. This rule deals with subpenas of Commission staff personnel and subpenas for production of documentary materials in the possession of the Commission. The proposed changes would considerably enlarge the present rule to establish the procedures to be followed by parties seeking to subpena Commission staff personnel and to obtain production of documents both at a hearing and in connection with prehearing depositions. The amendments would provide for service of subpenas on the Commission's Secretary and conform the procedural schedule regarding prehearing depositions with that which applies to motions to quash subpenas served in connection with depositions. The rule would also be changed to authorize the General Counsel to designate an attorney to represent Commission staff personnel under subpena and to permit rulings of the presiding officer to be appealed or, absent appeal, to be reviewed by the Commission. Replies to appeals would be permitted and the filing of such appeals would automatically stay the presiding officer's rulings until the Commission acted on the matter.

MABA suggests that the subpena be served directly on the Commission staff member although not opposing service of a copy on the Secretary for his information and that of the Commission. MABA expresses dissatisfaction with the proposal that the General Counsel designate an attorney to represent the staff member, suggesting that the staff member be permitted to retain his own counsel. Moreover, MABA is concerned that the authority granted to the General Counsel would result in a "commingling of functions." MABA believes that the General Counsel would be supervising the attorney representing the staff member in the matter of reviewing the subpena or discovery request and would also be supervising another attorney in the event of appeal or on Commission review of the presiding officer's rulings. MABA also expresses concern that the Commission would be reviewing rulings of the presiding officer and fears that the Commission will overrule the presiding officer without having the benefit of the parties' views if no appeal has been filed. It also fears that the Commission will rule without stating its reasons and supporting evidence. MABA believes that matters arising under the rule should be reviewed by the courts rather than the Commission.

In its supplemental comments, MABA opposes the idea of permitting automatic appeals or review by the Commission in the case of subpenas and discovery directed against Commission staff personnel. MABA argues that such a procedure establishes disparate treatment among litigating parties. MABA contends that the proposed procedure is inconsistent with section 27 of the Shipping Act, 1916, and with the legislative history thereof. MABA contends that the Commission's staff member should follow the same procedure as do other parties, that is, move for leave to appeal to the Commission, and that in the event of refusal to comply with a ruling of the presiding officer, the matter be tested in the courts. After careful analysis of these comments, the Commission believes that they are not persuasive and that the rule should be amended as proposed.

MABA's concern that service on the Secretary rather than on the staff member may not serve to inform the staff member of his obligations and that designation of an attorney to represent the staff member by the General Counsel will lead to improper "commingling of functions" is unwarranted. As explained in the Notice of Proposed Rulemaking, cited above, the rule change would eliminate the present inconsistencies and confusion as to the person on whom a subpena or discovery request is to be served. It would also provide a staff member with legal representation, something the present rule does not do, although in practice an attorney who is a member of the Office of the General Counsel has usually been designated to provide such representation. In previous practice, a staff member has been informed of the service of the subpena whether it had been served on the General Counsel or the Secretary. The staff member will continue to be informed. Furthermore, it does not follow that service on the Secretary deprives the staff member of his own views on the propriety of complying with a subpena or discovery order. Likewise, the designation of an attorney by the General Counsel is not intended to have this effect.

MABA's concern that appointment of an attorney by the General Counsel would lead to improper "commingling of functions" is based upon a wrong premise. MABA presumes that the General Counsel will supervise the designated attorney. In fact, that attorney will be free to represent the staff member before the presiding officer and the Commission without supervision by the General Counsel or by anyone whose interests may conflict with those of the staff member. The General Counsel would become involved only in the matter of advising the Commission when appeals are filed or the Commission decides to review on its own motion. Furthermore, to allay any possible remaining concern, the Commission would expect the General Counsel whenever possible, to select an attorney from outside his office.

MABA's concern that the change in procedure would depart from the principle of equality embodied in section 27 of the Shipping Act, 1916, or its legislative history has superficial appeal but ignores the unique status and responsibilities of the Commission. As we stated in the Notice of Proposed Rulemaking, cited above, the Commission is a government agency involved in law enforcement activities, unlike private litigants, and certain privileges against disclosure have been recognized in the law because of these unique responsibilities. See the Freedom of Information Act, as amended, 5 U.S.C. 552(b). Unless the Commission itself has some control over the matter of prehearing discovery and disclosure directed aginst its own staff and documents in its possession, the Commission cannot adequately protect functions which may involve delicate and sensitive considerations of policy as to which presiding officers may be unaware. MABA seems to assume, furthermore, that the Commission would always be overruling presiding officers in an effort to prevent disclosure. The rule change would also apply, however, to situations in which the presiding officer has denied a discovery request so that the Commission could also overrule him and order disclosure. Of course, as in any final ruling of the Commission, an aggrieved party ultimately has the right to judicial review. Finally, at worst a litigant might be deprived of access to general information in the possession of the Commission or a staff member, which information may or may not really be necessary to the development of the litigant's case. This is in contrast to the situation in which a party under investigation or accused of violations of law seeks access to relevant information for purposes of cross-examination of Commission staff members who testify against such party. In the latter situations, as MABA itself has observed, the Commission has adopted a procedure in which the presiding officer may rule upon the matter of production or disclosure and appeal to the Commission may be taken only by his leave. See "Delaware River Port Au-

thority, et al. v. United States Lines, Inc., et al.," 16 SRR 1546 (1976). It is obviously the latter type of situation in which a party might be prejudiced during the course of a proceeding if deprived of vital information rather than the former situation in which general preparatory probing is being conducted prior to hearing.[1] However, the Commission does not intend to deprive parties of vital information necessary for proper cross-examination nor conduct its investigations and present evidence in reliance upon secret, privileged information.

We are not persuaded by MABA's contentions that the Commission will be deprived of the views of the parties where no appeal is taken and that the Commission will not explain its reasons for its rulings. If an affected party wishes to present his views to the Commission in connection with a ruling of the presiding officer, he need only exercise his right to file an appeal within the prescribed period of time. In the event of review by the Commission, absent appeal, the parties' views as expressed to the presiding officer are on record and will be considered. MABA's contention that a statement of reasons explaining the Commission's rulings should be required erroneously presumes that the Commission will act contrary to law by issuing rulings without explanations.

2. Rule 209, 46 CFR 502.209. This rule deals with the use of prehearing discovery processes directed to Commission staff personnel. It follows the same procedures as set forth in the preceding rule with regard to the designation of an attorney by the General Counsel and the matter of appeals from and review of the presiding officer's rulings. MABA's comments regarding the proposed changes to this rule are identical with those directed to the previous rule and, as already discussed, are without merit.

3. Rule 153, 46 CFR 502.153. The Commission proposed to amend this rule by permitting parties to file replies to motions for leave to appeal rulings of the presiding officer. The present rule fails to make such provision. As explained in the Notice of Proposed Rulemaking, this amendment would establish a fairer procedure, enable the presiding officer to rule after having the benefit of all views, and conform to current practice. MABA made no comments on this proposed amendment.

Having considered the comments on Rules 135 and 209 and found them to be without merit, the Commission is therefore adopting the amendments to the above three rules as originally proposed with slight clarifications.[2] Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553), and sections 27 and 43 of the Shipping Act, 1916 (46 U.S.C. 826, 841a), Part 502 of Title 46, Code of Federal Regulations, is amended as set forth below.

1. Section 502.135 is revised to read as follows:

§ 502.135 Subpena of Commission staff personnel, documents or things.

(a) A subpena for the attendance of Commission staff personnel or for the production of documentary materials in the possession of the Commission shall be served upon the Secretary. If the subpena is returnable at hearing, a motion to quash may be filed within five (5) days of service and attendance shall not be required until the presiding officer rules on said motion. If the subpena is served in connection with prehearing depositions, the procedure to be followed with respect to motions to quash and replies thereto will correspond to the procedures established with respect to motions and replies in § 502.132(c).

(b) The General Counsel shall designate an attorney to represent any Commission staff personnel subpenaed under this section. The attorney so designated shall not thereafter participate in the Commission's decisionmaking process concerning any issue in the proceeding.

(c) Rulings of the presiding officer issued under § 502.135(a) shall become final rulings of the Commission unless an appeal is filed within ten (10) days after date of issuance of such rulings or unless the Commission on its own motion reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No ruling of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs.

2. Section 502.209 is revised to read as follows:

§ 502.209 Use of discovery procedures directed to Commission staff personnel.

(a) Discovery procedures described in §§ 502.204, 502.205, 502.206, 502.207, and 502.208, directed to Commission staff personnel shall be permitted and shall be governed by the procedures set forth in those sections except as modified by paragraphs (b) and (c) of this section. All notices to take depositions, written interrogatories, requests for production of documents and other things, requests for admissions, and any motions in connection with the foregoing, shall be served on the Secretary of the Commission.

(b) The General Counsel shall designate an attorney to represent any Commission staff personnel to whom any discovery requests or motions are directed. The attorney so designated shall not thereafter participate in the Commission's decision-making process concerning any issue in the proceeding.

(c) Rulings of the presiding officer issued under § 502.209(a) shall become final rulings of the Commission unless an appeal is filed within ten (10) days after date of issuance of such rulings or unles the Commission on its own motion reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No ruling of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs.

§ 502.153 [Amended]

3. Section 502.153 is amended by inserting the following sentence after the third sentence:

* * * Replies to the motion and the appeal may be filed within fifteen (15) days after date of service thereof unless the presiding officer for good cause shown enlarges or shortens the time.

Effective Date. Inasmuch as the expeditious adoption of these rules is desirable and inasmuch as they are procedural in nature, they shall be effective May 8, 1978, and shall be applicable to all pending and future proceedings.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-12381 Filed 5-5-78; 8:45 am]

[1]The distinction between general prehearing discovery and inspection and production of specific information for purposes of cross-examination has been recognized by the courts as well as by the Commission. The latter situation relates to the famous case of "Jencks v. United States," 353 U.S. 657 (1957), and to Federal Rule of Evidence 612, 28 U.S.C.A. See 7 A.L.R. 3d 181, § 17; "Zuzich Truck Line, Inc. v. United States," 224 F. Supp. 457, 461 (D. Kans. 1963); "United States v. Harrison," 461 F. 2d 1127 (5th Cir. 1972) cert. denied, 409 U.S. 884.

[2]The last sentences of proposed rules 135(c) and 209(c) have been revised to clarify the effective date of rulings.

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.

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 78-NW-7 AD]

BOEING 707-300/-400/-300B/-300C

Proposed Airworthiness Directive

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: It is proposed to require structural changes to the Boeing 707-300/-400/-300B/-300C horizontal stabilizer which would provide an alternate load path if spar chord cracking should occur. This modification would assure compliance with the airworthiness standards which make up the certification basis for the aircraft. Failure to make these modifications could lead to loss of a horizontal stabilizer and a resultant loss of aircraft control. Airworthiness Directives (ADs) 77-16-11 and 78-01-04 require repetitive inspections of the stabilizer at intervals of 375 landings. This proposal, if adopted, will provide terminating action for these ADs'.

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

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket, Docket No. 78-NW-7 AD, 9010 East Marginal Way South, Seattle, Wash. 98108.

FOR FURTHER INFORMATION CONTACT:

Harold N. Wantiez, Airframe Section, ANW-212, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Wash. 98108, telephone 206-767-2516.

SUPPLEMENTARY INFORMATION: COMMENT INVITED

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. Communication should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals 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 this proposal will be filed in the Rules Docket.

AVAILABILITY OF NPRMS

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket, Docket No. 78-NW-7 AD, 9010 East Marginal Way South, Seattle, Wash. 98108.

DISCUSSION OF THE PROPOSED RULE

Information from the accident investigation of a Boeing 707-321C, which crashed in Zambia, Africa, revealed that the right hand stabilizer separated from the airplane during final approach. Analysis of the fracture surface indicates that the upper rear spar chord of the right hand stabilizer experienced a fatigue failure sometime prior to the accident.

The closure rib chord also showed evidence of fatigue. On May 18, 1977, an AD was issued which required visual inspection of the stabilizer rear spar upper chord. This action was later found to be insufficient, since further investigation indicated that cracks may exist in the stabilizer rear spar upper chord which are not detectable by visual means but are detectable by nondestructive testing methods (NDT). A superseding AD telegraphic message was issued on May 27, 1977, requiring one-time NDT inspections of the chord. On July 11, 1977, another AD telegraphic message was issued which required an additional one-time NDT inspection. During July and August 1977, the manufacturer conducted static tests on a 707-400 horizontal stabilizer. First, strain surveys were conducted with the application of loads corresponding to certain flap configurations and failsafe design conditions. Then, the upper chord on the right hand side of the rear spar was cut to simulate the structural configuration of the accident airplane. Loads were then applied to the stabilizer simulating the 1 G flaps 50 flight condition. This caused a failure of the fasteners tying the skin to the rear spar upper chord inboard of the cut and also the web from the upper chord to the mid chord. On August 1, 1977, loads were placed on the stabilizer to simulate a 1 G flaps 50 abrupt elevator condition. There appeared to be some distress; however, the structure remained intact. On August 4, 1977, loads were placed on the stabilizer representing the failsafe negative gust condition (condition 1022). Upon reaching 80 percent of this load condition, the stabilizer failed. In order to have passed the test the stabilizer was required to carry 115 percent of condition 1022, without failure.

On August 15, 1977, AD 77-16-11 was issued which superseded all previous messages and ADs and required repetitive inspections at an interval of 375 landings. On December 27, 1977, AD 78-01-04 was issued to require visual inspection of the rear spar center section of the horizontal stabilizer upon a finding that this portion of the structure appeared not to meet Part 4b of the Civil Air Regulations, the airworthiness standards that make up the certification basis of the Boeing Model 707 airplane. AD 77-16-11 and AD 78-01-04 provide interim inspections until the terminating action being proposed by this notice is accomplished.

The stabilizer is capable of carrying all design loads so long as cracks do not extend beyond critical lengths into the body of the rear spar upper chord. With the chord completely severed, the stabilizer is not capable of carrying failsafe design loads. It will be necessary to modify the basic structure to improve the failsafe capability of the horizontal stabilizer.

A draft regulatory AD analysis for this notice is available for public review and comment. It is contained in the rules docket at the address specified above. That analysis discusses the major alternatives to this proposed action considered by the FAA. The alternative of requiring immediate modification is felt by the FAA to be unreasonable while that of requiring continued periodic inspections under the existing ADs is not believed to provide a long term adequate level of safety.

DRAFTING INFORMATION

The principal authors of this document are Harold N. Wantiez, Engi-

neering and Manufacturing Branch, Northwest Region, and Jonathan Howe, Regional Counsel, Northwest Region.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

BOEING: Applies to all Boeing 707-300/-400/-300B/-300C airplanes certified in all categories previous to line number (to be determined). Compliance required no later than January 1, 1980.

Install structural improvement kits on the horizontal stabilizer and center section in accordance with (a) Boeing Service Bulletins 3313 Rev. 5 or later FAA approved Revisions and 3331 Rev. 1 or later FAA approved Revisions; or (b) a modification approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region. Compliance with this AD constitutes terminating action for ADs 77-16-11 and 78-01-04.

(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 11.85)

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 A-107.

Issued in Seattle, Wash., on April 28, 1978.

C. B. WALK, Jr.,
Director,
Northwest Region.

[FR Doc. 78-12446 Filed 5-5-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[EDR-354; Docket 32585; Dated: May 1, 1978]

[14 CFR Ch. II]

QUALITY OF AIR TRANSPORTATION SERVICES

Advance Notice of Proposed Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Board is concerned that passengers and competing carriers may not have enough information available on the various dimensions of air travel service quality. While some information is readily available, information on some other important dimensions is difficult, if not impossible, to gather unless the passenger has substantial experience with the same trip. The Board has decided to solicit public views on whether it should collect and make available to the public data on performance quality in air travel and associated ground service of the United States certificated air carriers, and, if so, what information should be disseminated and in what form to best serve the public need at least cost to the carriers and the Board.

DATE: Comments by: July 7, 1978. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 32585, 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:

Brinley H. Williams, Jr., Office of the Consumer Advocate, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5482, or Steven Salop, Office of Economic Analysis, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5978.

SUPPLEMENTARY INFORMATION: To evaluate the various price-service options available from competing carriers, passengers must subjectively evaluate and compare a diverse set of price and service components. For some objective components, information is readily available from the official airline guide, carriers and travel agents. Some other objective components, such as on-time performance, denied boarding ("bumping") rates, and baggage loss and damage frequency, are more difficult to gather. It is also difficult to gather useful information regarding such subjective components as customer treatment and meal quality, except through personal experience and carriers' reputations.

While carrier's performance records are generally outstanding, one would expect differences among carriers in particular markets. Carriers allocate their resources among the various service components according to their relative costs of providing each service and their notion of the weight consumers place on each component. Simply stated, carriers compete on service components as well as price. The ability of carriers to compete on particular service components is constrained by a shortage of information. For example, a carrier cannot advertise its superior baggage handling record, if its competitors' relative performance is unknown. If one carrier considers a guarantee on baggage retrieval time or on-time performance, and offers to compensate passengers in the event of failure, it cannot easily evaluate the profitability of the performance-guarantee in the absence of knowledge of its competitiors' records; nor can consumers easily value the offer without some idea of that same information.

Thus, improved information would be valuable to both the travelling public in choosing among carriers and to carriers in adopting competitive service, advertising and guarantee policies. However, these improvements in information collection and dissemination can only come at an additional cost to the carriers and the Board. Therefore, in designing any new program, care must be taken to ensure that the value of any additional effort will be worth the cost.

The design of an information collection and dissemination program is not a trivial problem. Information is only valuable if it is processed and used, and it can only be used if the data is presented in a usable form. This is a more serious problem for a program focusing on dissemination to consumers. "Information overload" considerations suggest that if too much data is presented, none will be used. The alternative solution of limiting the data to only a few variables requires a careful selection of "key" variables, for in response to the new information, carriers will increase their service expenditures and base their comparative advertising on those components published. Information overload seems less of a problem if the program is geared towards improving carriers' information for use in comparatives advertising compaigns and guaranteed service offerings. However, in this case, the potential for deception must be considered.

In light of these issues and potential problems, the Board is requesting comments on the design, cost, and benefits of an expanded information collection and dissemination program. Comments should be directed to the issues raised above, the following questions below, and any other issues deemed important.

(1) What dimensions of service quality are important to passengers? Which are most important to the greatest number of passengers?

(2) For which of the following items could the Board effectively provide information, based on data collected from the carriers?[1] What would be the

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[1] The Board currently obtains carrier data in some form on items (a), (b), (c), (d), and (i). What modification might be needed in the data now collected? With regard to additional data, * * * Should data be required from all certificated carriers including supplementals, trunks and local service carriers, or trunks only? Should commuters be permitted to file data? Should data cover the top 200 markets or some other set of markets? In what form should the Board make information available? By carrier, by

Footnotes continued on next page

cost to carriers of collecting the additional data itemized? Is this or similar data currently collected by the carriers?

(a) On-time performance,
(b) Flight cancellation rates,
(c) Bumping rates,
(d) Average load factors, by class of service,
(e) Proportion of flights fully booked and/or stop-saled,
(f) Lost, damaged, or delayed (resulting in the filing of a baggage irregularity report) baggage rates,
(g) Average retrieval time for baggage delivery,
(h) Number of consumer complaints categorized by (i) flight cancellation, delays, irregularities; (ii) reservations; (iii) fares and refunds; (iv) baggage; (v) customer treatment; (vi) discrimination; (vii) flight information; (viii) inflight service; (ix) equipment and facilities; and (x) other,
(i) Seating pitch and width, by class of service,
(j) Aisle width,
(k) Average number of cabin attendants per passenger, by class of service,
(l) Average number of passengers (or seats) per restroom, by class of service,
(m) Cubic space per passenger available for carry-on items,
(n) Cabin noise level, and
(o) Other.

(3) Are passengers already adequately informed? If so, what variables comprise adequate information? How might the flow of currently available information be voluntarily improved by carriers?

(4) How should data currently collected and any additional data collected be disseminated for maximum usefulness? Additions to the official airline guide? Booklets? Is information overload a serious problem? If so, what key variables should be emphasized?

(5) Would consumer servey data be useful in the selection of key variables? Would carriers voluntarily make their consumer surveys available to the Board for this purpose? Should the Board consider collection and publication of consumer servey data on the quality of service of different carriers?

(6) What information would carriers find useful in formulating service policies and advertising service quality? What information would be necessary to utilize performace guarantees as a competitive tool? Is reliance on comparative advertising and performance guarantees a viable solution? What sort of guidelines regarding misleading use of data and deceptive practices are necessary?

(Sec. 204, 404, and 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, 766 (49 U.S.C. 1324, 1374, and 1377).)

Footnotes continued from last page

market, or in some other manner? How often should data be collected?

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR
Secretary.

[FR Doc. 78-12624 Filed 5-5-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 441]

MOBILE HOME SALES AND SERVICE

Additional Hearing Regarding Telephone Survey by The Housing Advocates, Inc., on the Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Additional public hearing scheduled at Washington, D.C.

SUMMARY: On May 23, 1977 (42 FR 26398), the Presiding Officer published in the FEDERAL REGISTER a Final Notice of a proposed trade regulation rule proceeding concerning Mobile Home Sales and Service. On December 7, 1977 (42 FR 61871), the Presiding Officer published in the FEDERAL REGISTER a notice of additional hearings. A hearing in addition to those listed in those two notices has been scheduled.

DATES: A public hearing will be held on June 9, 1978, commencing at 9:30 a.m. Written rebuttal submissions limited to and relevant to only The Housing Advocates' survey (and testimony) and the MHI rebuttal witness testimony will be accepted for the record until no later than June 23, 1978.

ADDRESS: Hearing location: Room 532 of the Federal Trade Commission Building, Pennsylvania Avenue at Sixth Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Raymond L. Rhine, Presiding Officer, Room 667, Bicentennial Building, Sixth and E Streets NW., Washington, D.C. 20580, 202-724-1037.

SUPPLEMENTAL INFORMATION: On April 11, 1978, the Presiding Officer issued a Ruling reopening the Public Record for the receipt of a telephone survey of nonrespondents by The Housing Advocates, Inc., relating to the Proposed Trade Regulation Rule and other related material. The Presiding Officer has scheduled an additional hearing to be held on June 9, 1978 for the purpose of:

1. Receiving testimony by a witness for The Housing Advocates, Inc., regarding the survey;
2. Cross-examination of that witness by Group Representatives;
3. Rebuttal testimony limited to The Housing Advocates' survey and the related material by a rebuttal witness for the Manufactured Housing Institute;
4. Cross-examination of the MHI rebuttal witness by Group Representatives.

Interested parties are invited to attend the hearing and to file written rebuttal limited to and relevant to only The Housing Advocate's survey and to 1 to 4 above. Such submissions will be accepted for the public record if received by the Presiding Officer on or before June 23, 1978.

More detailed instructions to the two witnesses for the filing of statements and for Group Representatives to request cross-examination are included in the Presiding Officer's Ruling Reopening Public Record for Submission of Housing Advocates' survey, April 11, 1978, his Ruling Granting MHI Request to Provide Witness—Housing Advocates' Survey, April 18, 1978, and his Memorandum Setting New Hearing Date and Relating to Procedures, April 28, 1978. The requirements of those Rulings for participation at the hearing must be observed by witnesses and Group Representatives. The hearing date was originally scheduled for June 2, 1978 as stated in the April 11 and 18, 1978 Rulings. The hearing date has been changed to June 9, 1978. Copies of the Rulings will be sent upon request.

Issued: May 2, 1978.

RAYMOND L. RHINE,
Presiding Officer.

[FR Doc. 78-12409 Filed 5-5-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 210]

[Release Nos. 33-5928, 34-14717, 35-20521; Files S7-715 and S7-724]

ACCOUNTING PRACTICES—OIL AND GAS PRODUCERS

Additional Hearing Date and Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Notice of addtional hearing date and extension of comment period for proposed rules.

SUMMARY: The Commission has announced that on May 10, 1978, it will hold a further day of hearing in connection with the Commission's rulemaking proposals relating to accounting practices for oil and gas producers which the Commission published for comment in Release Nos. 33-5877, August 31, 1977 (42 FR 44927), and 33-5861, October 26, 1977 (42 FR 57661). The Commission has also extended the comment period on these proceedings and on its related proposed replacement cost disclosure rules to May 31, 1978.

DATE: Comments should be submitted on or before May 31, 1978.

ADDRESS: Comments should refer to File S7-715. Comments on the rules proposed in Release Nos. 33-5878 and 33-5916 should also refer to File S7-724. Comments should be submitted in triplicate to George A Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. All comments will be available for public inspection.

FOR FURTHER INFORMATION CONTACT:

Richard C. Adkerson, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-1671.

SUPPLEMENTARY INFORMATION: The May 10, 1978 hearing will begin at 9 a.m. in Room 776, 500 North Capitol Street, Washington, D.C. The schedule of presentations will be published in the "SEC News Digest".

The Commission has thus far held a total of eleven days of hearing on these proposals in Washington, D.C. and Houston, Tex. Transcripts of the hearing are available for public inspection at the Commission's public reference room, 1100 L Street NW., Washington, D.C.

In its Notice of Public Hearing, Release No. 33-5905, February 10, 1978 (43 FR 6810), the Commission announced that comments on (1) matters discussed at the public hearing, (2) material place in Public File S7-715, the public file for these proceedings, or (3) matters otherwise pertinent to these procedings, were to be submitted no later than May 19, 1978. The Commission has extended that date to May 31, 1978. The Commission has also extended to May 31, 1978, the comment period on related rules requiring disclosure of information based on the present value of future net revenues from estimated production of proved oil and gas reserves which it originally proposed in Release No. 33-5878, November 3, 1977 (42 FR 57652) and revised in Release No. 33-5916, March 24, 1978 (43 FR 12334).

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

APRIL 28, 1978.

[FR Doc. 78-12444 Filed 5-5-78; 8:45 am]

[8010-01]

[17 CFR Part 270]

[Release No. IC-10222; File No. S7-738]

PREVENTION OF UNLAWFUL ACTIVITIES WITH RESPECT TO REGISTERED INVESTMENT COMPANIES

Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period for comments set in the notice published March 20, 1978, requesting public comment regarding proposed Rule 17j-1 under the Investment Company Act of 1940. Proposed rule 17j is proposed to prevent unlawful activities with respect to registered investment companies.

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

ADDRESSES: Comments should be sent in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 and should refer to File No. S7-738.

FOR FURTHER INFORMATION CONTACT:

Walter R. McEwen, Esq., Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-4866.

SUPPLEMENTARY INFORMATION: Notice was published on March 20, 1978, Released No. IC-10162 (43 FR 7976, March 27, 1978) requesting the submission of views with respect to the proposed rule which would prohibit certain activities on the part of persons affiliated with registered investment companies or their investment advisers or principal underwriter. The proposed rule would also require that such entities establish codes of ethics applicable to certain persons associated with them, and would require that these persons make specified reports regarding their securities transactions. The Commission has received requests from two interested members of the public that the comment period be extended. The Commission has determined that it is in the public interest to allow the organizations making the requests additional time to submit comments on the proposed rule. Accordingly, the Commission hereby extends the period for comments on proposed Rule 17j-1 to May 30, 1978.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

APRIL 28, 1978.

[FR Doc. 78-12445 Filed 5-5-78; 8:45 am]

[6740-02]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 1]

[Docket No. RM78-10]

PROCEDURES FOR REVIEW BY FEDERAL ENERGY REGULATORY COMMISSION OF REMEDIAL ORDERS ISSUED BY SECRETARY OF ENERGY

Proposed Rulemaking and Public Hearing

MAY 2, 1978.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Energy Regulatory Commission (the Commission) gives notice of a proposal to establish regulations governing procedures for Commission review of remedial orders issued by the Secretary of Energy (the Secretary) pursuant to the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159), as amended (the EPAA). Authority to review remedial orders of the Secretary was conferred upon the Commission by section 503 of the Department of Energy Organization Act, Pub. L. 95-91 (the Act).

DATES: Written comments by June 5, 1978; requests to speak by May 19, 1978; statements by May 24, 1978; public hearing to be held at 9:30 a.m., May 25, 1978, to be continued the following day if necessary.

ADDRESSES: Written comments, requests to speak and statements should reference Docket No. RM78-10 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, the public hearing will be held at the same location in hearing room A.

FOR FURTHER INFORMATION CONTACT:

Mary Wright, Assistant General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 8200, Washington, D.C. 20426, 202-275-4273.

Bonnie Cord, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 8200, Washington, D.C. 20426, 202-275-4210.

SUPPLEMENTARY INFORMATION:

A. BACKGROUND

Section 503(a) of the Department of Energy Act (Pub. L. 95-91) (the Act), provides that if upon investigation, the Secretary of Energy (Secretary) or his authorized representative believes that a person, including any individual, association, company, corporation, partnership or other entity, has violated any regulation, rule or order issued

pursuant to the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159, as amended) (EPAA), he may issue a remedial order to that person. Section 503(b) of the Act provides that the remedial order will become effective 30 days after receipt unless the recipient notifies the Secretary that he intends to contest the order.

Under section 503(c), if the Secretary receives notice that the order will be contested the Secretary must notify the Commission immediately, and the Commission is required to stay the effect of the remedial order unless it finds that the public interest requires immediate compliance. Section 503(c) further states:

> The Commission shall, upon request, afford an opporunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Commission in its discretion determines that such is required for a full and true disclosure of the facts, the Commission shall afford the right of cross-examination. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's remedial order, or directing other appropraite relief, and such order shall, for the purpose of judicial review, constitute a final agency action, except that enforcement and other judicial review of such action shall be the responsibility of the Secretary.

The Statement of Managers accompanying the Conference Report on the Act states that responsibility to review remedial orders was placed in the Commission rather than elsewhere in the Department to assure that the Department's review of any initial action taken with respect to remedial orders will be by officials who were in no way involved in the Department's original action. The Conferees stated that this would guarantee a separation of the Department's prosecutorial and judicial functions relating to enforcement. The Conferees also emphasized that the procedures specified in the Act for review of remedial orders—

> * * * are intended to clearly reaffirm the intent of Congress that those involved in enforcement actions * * * be extended procedural due process. Congress always intended that the notions of fair play and due process be followed in the administrative process. (S. Rep. No. 95-367, 95th Cong. 1st Sess. 85-86 (1977)).

On January 6, 1978, the Economic Regulatory Administration (ERA) issued proposed regulations, effective immediately on an interim basis (43 FR 1930, January 13, 1978) relating to the procedures that it would follow in issuing remedial orders under the EPAA.

By notice issued March 15, 1978, (43 FR 13073, March 29, 1978), ERA extended the date for filing comments to May 10, 1978, and scheduled a public hearing on the proposals for May 3, 1978. The regulations proposed by ERA provide generally for issuance by the Special Counsel for Compliance or the Assistant Administrator for Enforcement of a proposed remedial order, followed by an opportunity for aggrieved or interested parties to present evidence before the ERA's Office of Adminsitrative Review relative to the proposed remedial order prior to issuance of the remedial order in final form. Under ERA's proposal, evidentiary hearings could be convened where appropriate, and an opportunity for oral argument would be afforded as a matter of right. The proposed regulations would also apply to interim remedial orders for immediate compliance and orders of disallowance, prohibit ex parte communications and authorize the issuance of ancillary orders. Since the proposal was issued, the Department has announced that that Office's functions will be transferred to a new Office of Hearing and Appeals (OHA) independent of ERA. Thus, under the Department's new announced organization, final remedial orders will be issued by OHA rather than by an office within ERA.

Since the proposed and interim regulations of the Department will to some extent affect the nature of the proceedings to be conducted by the Commission, the Commission invites interested persons to consider these regulations in connection with the Commission's proposed review procedures.

B. Summary of the Commission's Proposed Regulations.

The procedures proposed by the Commission for its review of remedial orders are intended to provide a full and fair consideration of the contested issues in relation to the order without imposing in any case procedural requirements which are unnecessary or unduly burdensome. Thus, the Commission anticipates that where necessary to provide a full and fair disclosure of the facts, an evidentiary hearing will be held, including the right of cross-examination, but that in some cases, disputed issues will be resolved on the basis of written submissions. Whenever a party to a proceeding requests an oral hearing with submissions of briefs, oral or documentary evidence and oral arguments, the request will be granted, as provided in section 503(c) of the Act.

Request for Confidential Treatment. Proposed § 1.38(c) of 18 CFR Part 1, Rules of Practice and Procedure of the Federal Energy Regulatory Commission, provides that information filed by a person under this section may be withheld from public disclosure if the person: (1) Claims that the material is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt from public disclosure; (2) requests the Presiding Office not to disclose the information; (3) serves the requests on other participants in the proceding; (4) submits a copy of the document concerned with alleged confidential information deleted; (5) indicates an the original document that confidentially is claimed; and (6) includes a statement justifying the confidentiality claim, if the claim is made pursuant to the trade secret and commercial or financial information exemption of 5 U.S.C. 552(b)(4). If the second copy with deletions is not submitted, the Presiding Officer may assume that there is no objection to public disclosure. The Presiding Officer shall notify a person of the denial of a claim and provide an opportunity to respond at least 5 days prior to public disclosure of the information. Other participants may oppose the request by filing, within 10 days of receiving a copy of the request, a statement specifying the reasons that the material should not be considered confidential. The Presiding Officer shall notify all participants of his determination as to the claimed confidentiality. if he finds that the information is confidential, the Presiding Officer shall, upon request, determine whether the information may be released to participants, upon request, and shall notify all participants of this determination.

The Commission particularly invites comments on the provisions of the proposal relating to confidentiality including the method by which presiding officers make the determinations of confidentiality. The possibility that a decision may be based on information contained in documents which other parties cannot contest because the information has been determined to be confidential is disturbing. However, the possibility of requiring parties to risk disclosing trade secrets or sensitive financial data to competitors in order to defend themselves in actions before the Commission also present problems. The Commission intends to consider a broad range of approaches to this matter, including refusing to classify any documents as confidential if it supports a material fact in the case and is contested. Accordingly, commentors are encouraged to submit alternative provisions governing confidentiality, and should consider this proposal merely as a description of the subject ot this portion of the rule and the issues involved in it.

Commencement of Proceedings. Proposed § 1.38(d) provides that proceedings under this section are commenced by written notice to the Commission by the Secretary of Energy or his delegate that he has been notified by the recipient of an order (the petitioner) that the order will be contested. The proceedings are also commenced by the petitioner's filing a notice of

appeal of the denial of an application for stay of an interim remedial order pursuant to 10 CFR 205.199(D)(i)(2). The contested order may be a remedial order under 10 CFR 205.199, an interim remedial order for immediate compliance under 10 CFR 205.199D on an order of disallowance under 10 CFR 205.199E. Upon notice from the Secretary or upon receipt of the notice of appeal from the petitioner under proposed § 1.38(d), the Presiding Officer would be designated by the Commission or its designee for the proceeding. In this regard, the Commission requests the views of interested parties as to whom it should appoint as Presiding Officer in these proceedings, and as to the type of qualifications or experience that would be realistic and desirable for Presiding Officers in view of the Commission's resources.

Stay of Contested Order. Proposed § 1.38(e) provides that upon filing of the notice by the Secretary under paragraph (d) the contested order is automatically stayed unless the Presiding Officer finds on its own motion or upon request of the Secretary or other participant that the public interest requires immediate compliance with the contested order. A request not granted within 10 days would be denied. The Presiding Officer could extend the time for a determination for up to 7 days. The Presiding Officer wil notify petitioner of any denial of a request, and such denial may be appealed to the Commission under § 1.28, except that if the Commission has not acted upon the appeal within 20 days of the filing of the appeal, the appeal shall be deemed to have been denied.

Pleadings. Within 20 days after service of notice by the Secretary under paragraph (d), the Secretary must file with the Presiding Officer and serve upon other participants a copy of the contested order and must certify to the Presiding Officer the complete record developed in the proceedings before the Secretary. In addition, the Secretary may elect to file a separate brief setting forth the elements of the alleged violation with a statement of the factual and legal basis of the contested order, which would also have to be filed with the Presiding Officer within 20 days and served on other participants.

The petitioner's reply, which is due within 20 days of service of the Secretary's pleadings and which the petitioner must serve on all participants in the proceeding, would be required to state fully the petitioner's objections, supported by arguments, to the legal and factual basis of the contested order. New facts or issues could be raised in accordance with the proposed § 1.38(f)(2)(ii). In this regard, the Commission would not review an order otherwise reviewable under this section which was issued without underlying evidentiary proceedings. If in the proceeding before OHA the recipient did not reply to a notice of probable violation or file a notice of objection to a proposed remedial order, a final remedial order could be issued on the basis of the recipient's "consent" without ERA's proving its affirmative case for the record. Thus, any facts or issues raised by the recipient before the Commission would be new facts or issues which would not satisfy the criteria of § 1.38(f)(2)(ii)(A).

Within 20 days from the service of the petitioner's reply, the Secretary may file a response to the petitioner's objections and supporting arguments, which response the Secretary must serve on all participants.

Any person denied the opportunity to participate in prior proceedings could petition to intervene, in accordance with § 1.8. In order that the petition be granted, the person must establish that the denial of opportunity to participate in prior proceedings was wrongful. If the petition were granted, the person could then file briefs as determined by the Presiding Officer.

The time for filing pleadings could be extended for good cause as provided in § 1.13(d).

Hearings. Proposed § 1.38(g)(1) states that any participant may, at a time or times specified by the Presiding Officer, request an opportunity for hearing, which shall be granted. The Presiding Officer may on his own motion convene a hearing. The Presiding Officer, on his motion or on the motion of a participant, could order that there be an opportunity for cross-examination if necessary for a full and true disclosure of the facts. Proposed § 1.38 also provides that the Presiding Officer shall give notice to all participants of the time and place of the hearing. That section also states that the Presiding Officer shall determine the issues to be resolved in the proceeding, may specify the time available for oral argument, and may convene a prehearing conference to determine the issues or the nature of the proceeding to be held.

The Presiding Officer would determine the order of procedure at the hearing, except that in every case, the Secretary has the burden of proof regarding all disputed elements of the affirmative case. Other matters relating to the conduct of the hearing are to be determined by the Presiding Officer. At the conclusion of the hearing an opportunity is provided for participants to submit proposed findings of fact and conclusions of law, and replies thereto, with the requirement that participants serve all such submissions on all other participants.

Order. Proposed § 1.38(i) provides that the Presiding Officer issue a proposed order affirming, modifying or vacating the contested order or directing other appropriate relief. The proposed order and a copy of the record would then be certified and filed with the Commission. A final order affirming, modifying or vacating the contested order or directing other appropriate relief issued by the Commission and served on all participants would constitute a final agency action for purposes of judicial review.

Ex parte communications. Proposed § 1.38(k) provides that the ex parte provisions of § 1.4(d) of this subpart apply to proceedings under this section as if such proceedings were contest on-the-record proceedings pending before the Commission.

Other Issues. The Commission requests comments not only on these proposed procedures, but also on suitable alternative thereto and on any other issues which interested persons believe it should consider in this rulemaking proceeding.

C. Written Comment Procedures

Interested persons are invited to submit written comments, data, views or arguments with respect to this proposal. An original and 14 copies should be filed with the Secretary of the Commission. All comments received prior to June 5, 1978, will be considered by the Commission prior to promulgation of final regulations. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street NE., Washington, D.C., during regular business hours. Comments should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, and should reference Docket No. RM78-10.

D. Public Hearing Procedures

A public hearing concerning this proposal will be held in Washington, D.C. on May 25, 1978, beginning at 9:30 a.m. and will continue if necessary on the following day. Any person interested in this proceeding or representing a group or class of persons interested in this proceeding may make a presentation at the hearing provided a written request to participate is received by the Secretary of the Commission prior to 4:30 p.m., on May 19, 1978.

Requests to participate the hearing should include a reference to Docket No. RM78-10, as well as a concise summary of the proposed oral presentation and a number where the person making the request may be reached by telephone. Prior to the hearing each person filling a request to particiapte will be contacted by the Presiding Officer or his designee for scheduling purposes. At least five copies of the statement shall be submitted to the

Secretary of the Commission prior to 4 p.m., on May 24, 1978. The Presiding Officer is authorized to limit oral presentation at the public hearing both as to length and as to substance. Persons participating in the public hearing should, if possible, bring 100 copies of their testimony to the hearing.

The hearing will not be a judicial or evidentiary-type hearing. There will be no cross-examination of persons presenting statements. However, the panel may question such persons and any interested person may submit questions to the Presiding Officer to be asked of persons making statements. The Presiding Officer will determine whether the question is relevant and whether the time limitations permit it to be presented. If time permits, at the conclusion of the initial oral statements, persons who have made oral statements will be given the opportunity to make a rebuttal statement. Any further procedural rules will be announced by the Presiding Officer at the hearing. A transcript of the hearing will be made available at the Commission's Office of Public Information.

(Department of Energy Organization Act Pub. L. 95-91; E.O. 12009, 42 FR 46267).

In consideration of the foregoing, it is proposed to amend Part I, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

LOIS D. CASHELL,
Acting Secretary.

1. Part 1, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, is amended in the table of contents by adding in the appropriate numerical order a new section number and heading to read as follows:

PART 1—RULES OF PRACTICE AND PROCEDURE

* * * * *

Sec. 1.38 Commission Review of Remedial Orders.

* * * * *

2. Part 1, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, is amended in the Statement of Authority by inserting between "825h," and "unless otherwise noted" a phrase to read as follows:

AUTHORITY: 42 U.S.C. 7193(c), E.O. 12009, 42 FR 46467. * * *

3. Part 1, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, is amended by adding a new § 1.38, to read as follows:

§ 1.38 Commission review of remedial orders.

(a) *Scope.* (1) The provisions of this section shall apply to proceedings of the Commission held in accordance with section 503(c) of the Department of Energy Organization Act, Pub. L. 95-91, 42 U.S.C. 7913(c), to review orders issued by the Secretary of Energy pursuant to section 503(a) of the Department of Energy Organization Act, and initiated by notices of probable violation issued on or after October 1, 1977, which are contested by the recipient.

(2) Except as otherwise specifically provided in this section, the following provisions of the Part shall apply to proceedings under this section:

(i) § 1.1—The Commission;
(ii) § 1.2—The Secretary;
(iii) § 1.3—Notice of public sessions and proceedings;
(iv) § 1.4—Appearances and practice before the Commission;
(v) § 1.8—Intervention (except for paragraph (b));
(vi) § 1.11—Amendments and withdrawal of pleadings;
(vii) § 1.12—Motions;
(viii) § 1.13—Time, extensions of time, issuance of orders;
(ix) § 1.14—Filings, docket; hearing calendar;
(x) § 1.15—Formal requirements as to pleadings, documents and other papers filed in proceedings;
(xi) § 1.16—Subscription and verification;
(xii) § 1.17—Service;
(xiii) § 1.21—Copies of transcripts;
(xiv) § 1.22—Witnesses;
(xv) § 1.23—Subpoenas;
(xvi) § 1.24—Depositions;
(xvii) § 1.25—Stipulations;
(xviii) § 1.26—Evidence;
(xix) § 1.27—Presiding officers;
(xx) § 1.36—Public information and requests; and
(xxi) § 1.51—Certificate of service.

(b) *Definitions.* For purposes of this section—

"Commission" means the Federal Energy Regulatory Commission.

"Contested order" means the remedial order, interim remedial order for immediate compliance, or order of disallowance being contested in a proceeding pursuant to this section.

"Interim remedial order for immediate compliance" means an interim remedial order for immediate compliance issued pursuant to 10 CFR 205.199D.

"Order of disallowance" means an order of disallowance issued pursuant to 10 CFR 205.199E.

"Participant" means, as appropriate, the Secretary, the petitioner, other interested persons who participated in prior proceedings on the contested order, and intervenors.

"Person" means any individual, association, company, corporation, partnership, or other entity however organized.

"Petitioner" means a person who has received a remedial order, interim remedial order for immediate compliance, or order of disallowance who notifies the Secretary that he intends to contest the order.

"Remedial order" means a remedial order issued pursuant to 10 CFR 205.199B.

"Secretary" means the Secretary of Energy or his delegate.

(c) Request for confidential treatment. (1) If any person filing under this section claims that some or all of the information contained in a document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, and if the person requests the Presiding Officer not to disclose such information, which request the person shall serve upon all participants in the proceeding, the person shall file together with the document a second copy of the document from which has been deleted the information for which the person wishes to claim confidential treatment. The person shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for nondisclosure of the information for which confidential treatment is claimed. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commerical or financial information, the person shall include a statement specifying why the information is privileged or confidential. If the person filing a document does not submit a second copy of the document with the confidential information deleted, the Presiding Officer may assume that there is no objection to public disclosure of the document in its entirety. The Presiding Officer retains the right to make his own determination with regard to any claim of confidentiality. Notice of the decision by the Presiding Officer to deny a claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than 5 days prior to its public disclosure.

(2) A participant in the proceeding who wishes to oppose a request for confidential treatment under subparagraph (1) of this paragraph shall, within ten days of the receipt of a copy of the request, file with the Presiding Officer and serve on other participants a statement specifying the reasons that the material is not confidential or priviledged. The Presiding Officer shall notify all participants of his determination as to confidentiality. If the Presiding Officer determines that the material is confidential, he shall, upon request by a participant, determine whether the infor-

mation may be released, upon request, to participants and shall notify all participants of his determination.

(d) *Commencement of proceedings.* (1) Except as provided in subparagraph (2) of this paragraph, proceedings pursuant to this section shall be commenced by written notice to the Commission by the Secretary that he has been notified by a petitioner that the petitioner intends to contest an order reviewable under this section. At the same time, the Secretary shall certify to the Commission that he has served such written notice upon other participants in the prior proceedings and upon persons denied intervention in the prior proceedings.

(2) Proceedings pursuant to this section with respect to an interim remedial order for immediate compliance shall be commenced by a petitioner's filing, with the Commission, a notice of appeal from the denial of an application for a stay of an interim remedial order for immediate compliance pursuant to 10 CFR 205.199(D)(i)(1).

(3) Upon receipt of notice from the Secretary under subparagraph (1) of this paragraph, or upon receipt of a notice of appeal by the petitioner under subparagraph (2) of this paragraph, the Commission or its designee shall designate a Presiding Officer for the proceeding and shall notify participants in the prior proceeding and persons denied intervention in the prior proceedings of such designation.

(e) *Stay of contested order.* (1) Upon the filing with the Commission by the Secretary of the notice under paragraph (d) of this section, the contested order shall be automatically stayed pending review pursuant to this section unless the Presiding Officer finds that the public interest requires immediate compliance with the contested order.

(2) The Secretary or other participant may at any time prior to the hearing under paragraph (g) of this section or if there is no hearing, prior to the issuance of a proposed order under paragraph (i) of this section, file a petition requesting that the contested order not be stayed and setting forth the legal and factual basis for the request.

(3) The Presiding Officer may request a written statement of the views of any participant regarding whether the contested order should not be stayed, and may convene an expedited hearing or conference on a petition under subparagraph (2) of this paragraph.

(4) The Presiding Officer may grant the petition requesting immediate compliance where he finds that the public interest requires immediate compliance.

(5) If the Presiding Officer has not granted the petition under subparagraph (2) of this paragraph within 10 days after it is filed, the petition shall be deemed denied. Prior to the expiration of the 10 day period the Presiding Officer may extend the period for decision for up to 7 days. At the end of the extension the petition, if not granted, shall be deemed denied.

(6) If the petition under subparagraph (2) of this paragraph is denied, the Presiding Officer shall notify petitioner of such denial.

(7) A grant or denial of a petition under subparagraph (2) of this paragraph may be appealed to the Commission in accordance with § 1.28, except that unless the Commission acts upon the appeal within 20 days after the filing of the appeal, the appeal shall be deemed to have been denied. The contested order will be automatically stayed pending the Commission's disposition of the appeal.

(f) *Pleadings.*—(1) *By the Secretary.* (i) Within 20 days after service of notice by the Secretary under paragraph (d), the Secretary:

(A) Shall file with the Presiding Officer a certified copy of the complete record developed in prior proceedings on the contested order, which shall be deemed a part of the record upon which the order of the Commission is based, and which shall be available at the Commission for inspection by the participants;

(B) Shall file with the Presiding Officer and serve on the other participants in the proceeding a copy of the contested order; and

(C) May, in addition, elect to file a brief in support of the affirmative case, which brief must set forth: (*1*) The elements of the alleged violation, including references to all authorities upon which the Secretary relies, including but not limited to regulations, rulings, interpretations and decisions on appeals and exceptions issued by the Department or its predecessor agencies, and precedents established by the Commission; and (*2*) a complete statement of the factual and legal basis of the contested order. The Secretary shall serve the brief on all participants in the proceedings.

(ii) With 20 days after service of the petitioner's reply, the Secretary may file with the Presiding Officer and serve upon other participants in the proceeding a response to the petitioner's reply.

(2) *By the petitioner.* (i) Within 20 days after service by the Secretary under subparagraph (1) of this paragraph, the petitioner shall file with the Presiding Officer and serve upon the Secretary and other participants in the proceeding a reply stating fully the objections, supported by arguments, to the factual and legal basis of the contested order.

(ii) In the reply, the petitioner may also request permission to raise new facts or issues not raised in prior proceedings on the contested order that (A)(*1*), are new facts or issues that were not known and could not, with the exercise of due care, have been known to the petitioner at the time they could have been raised during prior proceedings; or (*2*) are facts or issues that the petitioner was not permitted to raise due to adverse procedural rulings alleged to be erroneous in prior proceedings on the contested order; and (B) are necessary for a full and true disclosure of the facts.

(3) *By other persons.* Any other person who participated in prior proceedings on the contested order may participate in proceedings under this section and may make filings and submittals as determined by the Presiding Officer.

(4) *By intervenors.* Any person who was denied the opportunity to participate in prior proceedings on the contested order may petition the Presiding Officer to intervene in proceedings under this section in accordance with § 1.8. In order that the petition be granted, petitioner must show that denial of participation in prior proceedings was wrongful. If the Presiding Officer grants the petition, the petitioner may make filings and submittals as determined by the Presiding Officer.

(g) *Hearings.* (1) Any participant may, at such time or times as specified by the Presiding Officer, file a request for an opportunity for hearing or a motion for the opportunity for cross-examination including the reasons why cross-examination is necessary for a full and true disclosure of the facts.

(2) If a participant has filed a request for opportunity for hearing, the Presiding Officer shall grant the request for opportunity for hearing, which will include, at a minimum, the submission of oral or documentary evidence and oral arguments.

(3) The Presiding Officer may at any time, on his own motion, convene a hearing before the Presiding Officer.

(4) If at any time prior to the issuance of a proposed order pursuant to paragraph (i) of this section, upon motion of any participant or on his own motion, the Presiding Officer in his discretion determines that it is necessary for a full and true disclosure of the facts, he may order that the participants be afforded the opportunity for cross-examination on any facts or issues raised in the proceedings, on disputed portions of the record from prior proceedings, or, if determined under paragraph (f)(2)(ii) of this section, on new facts or issues.

(5) As soon as practicable after receiving the pleadings under paragraph (f) of this section, the Presiding Officer shall give notice to all participants of the time and place of the hearing.

(6) The Presiding Officer shall determine the issues to be resolved in

the proceeding, may specify the time available for oral argument, and shall give notice therof to the participants. The Presiding Officer may require additional information from the participants and may convene a prehearing conference for the purpose of determining the issues or the nature of the proceeding to be held.

(h) *Conduct of the hearing.* (1) The order of procedure at the hearing shall be determined by the Presiding Officer, except that the Secretary shall have the burden of proof with respect to all disputed elements of his affirmative case.

(2) The Presiding Officer shall be responsible for the conduct of the hearing.

(3) Within 10 days after the conclusion of the hearing, any participant may file with the Presiding Officer and serve upon the other participants proposed findings of fact and conclusions of law, a brief in support thereof and any objections with respect to the treatment of confidential information under paragraph (c) (2) of this section or a denial of a motion for an opportunity for cross-examination.

(4) Within 5 days after service of proposed findings of fact and conclusions of law under subparagraph (3) of this paragraph any participant may file, and shall serve on other participants, a reply thereto.

(i) *Proposed order.* (1) After the conclusion of the hearing and after the filing of briefs pursuant to paragraph (h) (3) and (4) of this section, the Presiding Officer shall issue a decision and proposed order based on findings of fact affirming, modifying, or vacating the contested order or directing other appropriate relief. The proposed order shall be based on the entire record before the Presiding Officer, including the record at prior proceedings certified by the Secretary, and shall be based on a preponderance of the evidence.

(2) The Presiding Officer shall certify and file with the Secretary of the Commission, for the Commission, a copy of the record on the hearing, including the proposed order.

(j) *Commission action.* The Commission shall upon consideration of the entire record and the proposed order issue a final order affirming, modifying, or vacating the contested order or directing other appropriate relief. The Commission shall serve the final order on all participants.

(k) *Ex parte communications.* The provisions of § 1.4(d) shall apply to proceedings pursuant to this section, commencing at the time the Secretary gives notice under paragraph (d)(1) of this section, as if such proceedings were contested on-the-record proceedings pending before the Commission.

[FR Doc. 78-12441 Filed 5-5-78; 8:45 am]

[4310-02]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 41]

PREPARATION OF ROLLS OF CERTAIN TRIBES AND BANDS OF INDIANS

Qualifications for Enrollment and Deadline for Filing

APRIL 24, 1978.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

Summary: The Bureau proposes to amend its regulations on preparation of rolls of Indians to include requirements for enrollment as a lineal descendant to share in the distribution of a judgment awarded the Saginaw, Swan Creek and Black River Bands of Chippewa Indians.

DATE: Comments must be received on or before: June 7, 1978.

ADDRESS: Written comments should be directed to: Chief, Division of Tribal Government Services, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT:

Mitchell L. Bush, Jr., Enrollment Officer, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20245, telephone 202-343-6921; principal author, Mitchell L. Bush, Jr.

SUPPLEMENTARY INFORMATION: The Saginaw, Swan Creek and Black River Bands of Chippewa Indians were awarded a judgment by the Indian Claims Commission in Docket 57. Funds to satisfy the award were appropriated by the Act of January 3, 1974. A plan for the use and distribution of the funds was submitted to the Congress as required by the Act of October 19, 1973, and since neither House of Congress adopted a resolution to disapprove the plan, it became effective on November 12, 1977.

The plan provides that the funds will be divided between the Saginaw Chippewa Tribe of Michigan and the descendants of the Saginaw, Swan Creek and Black River Bands of Chippewa Indians, parties to the Treaty of September 24, 1819. The division will be based on the number of enrollees on rolls of each group prepared as of November 12, 1977.

The purpose of this amendment to 25 CFR 41.3 by adding a new paragraph designated (cc) is to include in the regulations in Part 41, Preparation of Rolls of Indians, the requirements for enrollment to share in the funds as a lineal descendant of the Saginaw, Swan Creek and Black River Bands as prescribed by the plan, and to establish a deadline for filing applications for enrollment. The regulations will not apply to the preparation of a roll of members of the Saginaw Chippewa Indian Tribe of Michigan.

The authority for issuing these regulations is contained in 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9) and 230 DM 1 and 2.

Part 41, Chapter 1 of Title 25 of the Code of Federal Regulations is amended by the addition of a new paragraph designated (cc) to read as follows:

§ 41.3 Qualifications for enrollment and the deadline for filing.

* * * * * *

(cc) Saginaw, Swan Creek and Black River Bands of Chippewa Indians.

(1) All persons who meet the following requirements for eligibility shall be entitled to be enrolled to share in the distribution of the judgment funds awarded the Saginaw, Swan Creek and Black River Bands of Chippewa Indians in Indian Claims Commission Docket numbered 57:

(i) They were born on or prior to and living on November 12, 1977;

(ii) Their name or the name of a lineal ancestor appears on (a) the 1868 census of the Kansas Swan Creek and Black River Chippewas; (b) the 1900 enrollment schedules of the United Band of Chippewa and Munsee of Kansas, appearing thereon as a Chippewa; (c) allotment schedules of the Saginaw, Swan Creek and Black River Bands of Chippewa Indians dated February 6, 1871, June 3, 1871; April 1, 1872 (two schedules); November 10, 1883, November 13, 1885 (two schedules), and November 7, 1891; (d) the March 22, 1939, revised membership roll of the Saginaw Chippewa Indian Tribe of Michigan; (e) the records as a person of Chippewa Indian descent who received a tract of land pursuant to Article 3 of the Treaty of September 24, 1819 (7 Stat. 203), or (f) any other record or document which is acceptable to the Secretary.

(2) No person shall be eligible to be enrolled under this paragraph who is not a citizen of the United States or who is enrolled or entitled to be enrolled with the Saginaw Chippewa Indian Tribe of Michigan.

(3) Applications must be filed with the Superintendent, Michigan Agency, Bureau of Indian Affairs, P.O. Box 884, Sault Ste. Marie, Mich. 49783, on forms provided for that purpose. Applications for enrollment must be received by the Superintendent no later than the close of business, December 1, 1978.

No further changes are made in the text of Part 41.

FORREST J. GERARD,
Assistant Secretary,
Indian Affairs.

[FR Doc. 78-12412 Filed 5-5-78; 8:45 am]

[4830-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-1671]

ARBITRAGE BONDS

Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the arbitrage bond regulations. The amendments are designed to clarify and correct the regulations. They affect purchasers and governmental issuers of tax-exempt bonds.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 7, 1978. One proposed amendment generally applies to bonds sold after May 15, 1978. Other proposed amendments apply to bonds issued or sold as specified in the respective regulations sections amended. Where no effective date is specified, the changes apply retroactively because they merely correct technical errors or interpret the statute.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Katherine A. Newell of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3740, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 103(c) of the Internal Revenue Code of 1954. These amendments are to be issued under the authority contained in sections 103(c)(6) and 7805 of the Internal Revenue Code of 1954 (83 Stat. 656 and 68A Stat. 917; 26 U.S.C. 103, 7805).

PREVIOUS NOTICES OF PROPOSED RULEMAKING

On May 3, 1973, the FEDERAL REGISTER published proposed Income Tax Regulations 926 CFR part (1) under section 103 of the Internal Revenue Code of 1954 (38 FR 10944). The proposed regulations were revised by notices of proposed rulemaking published in the FEDERAL REGISTER for December 3, 1975 (40 FR 56488), October 9, 1976 (41 FR 47679), May 31, 1977 (42 FR 27610), and June 9, 1977 (42 FR 29517) and corrected by notices published in the FEDERAL REGISTER for May 11, 1973 (38 FR 12405), December 18, 1975 (40 FR 58656), November 24, 1976 (41 FR 51840), and June 21, 1977 (42 FR 31462). This notice of proposed rulemaking further revises the proposed regulations.

Section 103 generally exempts from tax interest on State and local government obligations. Section 103(c) provides that interest on State and local obligations will not be tax exempt where a major portion of the porceeds of the issue is reasonably expected to be used to purchase securities or obligations that may produce a yield materially higher than the yield on the State or local bond issue.

Paragraph (c) of proposed § 1.103-13 provides that the yield on an obligation is determined by reference to the purchase price. The amendments made to the proposed regulations by this document define "purchase price" as the price at which the bonds are sold to the public. The proposed regulations did not previously have a definition of purchase price. The definition of purchase price is the same as the one used in § 1.1232-3 in relation to original issue discount.

Paragraph (c)(1)(ii) of § 1.103-13 provides that in computing the yield on obligations issued to refund other obligations and on obligations placed in escrow, the present value of certain adminstrative costs may be taken into account in determining the present value of the obligations. This rule has allowed administrative cost to be disregarded in determining whether it is economical to refund a prior issue. The result has been inflated administrative costs. The amendment to the proposed regulations provides that administrative costs will not affect the purchase or sales price. Thus yield will be determined on a gross profit basis. In addition, the amendment provides that administrative costs borne by the obligor on acquired purpose obligations will not be taken into account in computing yield.

Paragraph (b)(5) of proposed regulations § 1.103-13 provides a definition for the term "materially higher" as it relates to the determination of whether the yield on obligations acquired with proceeds of a governmental obligation causes it to be an arbitrage bond. An amendment to paragraph (b)(5) provides a formula for determining whether yield is materially higher than the yield on a refunding issue before the prior issue is discharged. This amendment and the amendments relating to determination of yield under paragraph (c) apply to obligations issued after September 1, 1978.

Generally, the issuer of tax-exempt bonds must invest all but a minor portion of the bond proceeds at a restricted yield, that is, a yield not materially higher than the yield at which the bonds were sold. The term "proceeds" includes "original proceeds" and "investment proceeds." Some issuers have avoided the restrictions on investment yield by contributing taxes or other revenues to a sinking fund. The sinking fund is then invested at a rate which allows the issuer, where the entire issue is retired at the end of a fixed period, to make a profit on the investment of the fund. Because of this abuse, the regulations are being amended to provide that contributions made to a sinking fund are treated as proceeds of the issue to the extent the issuer reasonably expects to use the fund to pay principal or interest on the issue. These amounts will thus be subject to the limitation on yield rules. This amendment generally applies to obligations sold after May 15, 1978.

When obligations are issued, existing proposed § 1.103-13(a)(2) provides that the issuer may certify that its reasonable expectations are that the proceeds of the obligations will not be used for arbitrage. Under paragraph (a)(2)(iii) of § 1.103-13, the Internal Revenue Service may provide that future certifications of the issuer may not be relied upon. Where the face amount of obligations is in excess of $2.5 million counsel to the issuer must opine that the certification is not unreasonable.

Paragraph (a)(2) of the regulations is amended to provide that with respect to obligations issued after September 1, 1978, the issuer may certify its reasonable expectations as to future events such as use of funds. However, the issuer may not certify conclusions of law and opinion of counsel is no longer required. An additional amendment to paragraph (a)(2) provides that the Internal Revenue Service may announce that future certifications of an issuer cannot be relied on if the issuer has made a material misrepresentation in a certification.

COMMENTS—PUBLIC HEARING

Before adopting these proposed amendments, consideration will be given to any written comments that are submitted (preferable six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held in accord-

ance with the notice of hearing published in this issue of the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations was Katherine Newell of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR part 1 are as follows:

Paragraph 1. Section 1.103-13 is amended as follows:

1. The reference to "section 103(c)" in paragraph (a)(1) is changed to "section 103(b)".

2. Wherever "section 103 (d)" appears as a reference or as part of a reference, such reference is changed to "section 103 (c)".

3. The second and third sentences in paragraph (a)(2)(i) are revised and a new sentence is added to paragraph (a)(2)(i) after the third sentence as revised.

4. The reference to "this section and § 1.103-14" in paragraph (a)(2)(ii)(B) is changed to "this section, § 1.103-14, and § 1.103-15".

5. Paragraph (a)(2) is amended by redesignating subdivisions (iii) and (iv) as subdivisions (iv) and (v), by inserting a new subdivision (iii), by revising subdivision (iv) as redesignated, and by adding new examples (3) and (4) in subdivision (v) as redesignated.

6. The first and third sentences in paragraph (b)(1)(ii) are revised, paragraph (b)(5)(iii)(A) is revised by adding a new sentence at the end there of, new paragraphs (b)(5)(v), (b)(5)(vi), and (b)(5)(vii) are added, paragraph (b)(10)(i)(C) is revised, and a new paragraph (b)(11) is added.

7. Paragraph (c)(1) is amended by adding new subdivisions (iii)(D) and (iv).

8. Paragraph (c) is revised by redesignating subparagraph (4) as subparagraph (6) and by adding new subparagraphs (4) and (5).

9. Paragraph (d) is redesignated as paragraph (h) and a new paragraph (d) is added.

10. Paragraphs (f)(4)(ii) and (f)(4)(iii) are revised by inserting "original" before "proceeds" and inserting "such proceeds" in place of "the refunding issue", by redesignating paragraph (f)(4)(iv) as paragraph (f)(4)(v), and by adding a new paragraph (f)(4)(iv).

11. A new paragraph (g) is added.

§ 1.103-13 Arbitrage bonds.

(a) *Scope.* * * *

(2) *Reasonable expectations.* (i) * * * Thus, an obligation is not an arbitrage bond, if, based on the reasonable expectations on the date of issue as to the use of the proceeds of the issue, the proceeds will not be used in a manner that would cause the obligation to be an "arbitrage bond" under section 103 (c)(2), this section and § 1.103-14 and § 1.103-15. Reasonable expectations regarding the amount and use of the proceeds on or before September 1, 1978; may be established by the certification described in subdivision (ii) of this subparagraph. Reasonable expectations as to future events regarding a governmental obligation issued after September 1, 1978, may be established to the extent permitted by the certification described in subdivision (iii) of this subparagraph. * * *

* * * * *

(iii) (A) A State or local governmental unit may certify, in the bond indenture or a related document, reasonable expectations of the issuer on the date of the issue as to the future events, such as use of funds. For example, matters which may be certified include: The use to which amounts received from sale of the bonds will be put; the date on which a project financed by a sale of bonds will be completed; the amount that will be spent for construction of a such a project; and that a reserve or replacement fund of a certain amount will be established. On the other hand, an issuer may not certify that a reserve or replacement fund is reasonably required because the reasonableness of a reserve fund is an opinion or judgment that can be made before the date of issuance. As such it is not a reasonable expectation as to a future event.

(B) A State or local governmental unit may not certify conclusions of law (including legal characterizations of future events). For example, an issuer may not certify the statement that an obligation is not an arbitrage bond, or the statement that a major portion of the proceeds of an issue is not reasonably expected to be used directly or indirectly to acquire securities or obligations which may be reasonably expected to produce a yield over the term of the issue which is materially higher than the yield on the obligations of such issue. Both these statements are conclusions of law. In addition, a unit may not certify the date on which a temporary period ends because that is a conclusion of law. Similarly, a unit may not certify the statement that an obligation will produce a certain yield. This is because the statement uses "yield" as a defined legal term. Thus, the statement assumes that yield has been determined in a proper manner, which is a conclusion of law. On the other hand, a unit may describe the manner in which it has computed yield and certify that the yield on an obligation (determined in the manner described) is equal to a certain amount. In this statement yield is not used as a defined legal term. Therefore, the statement does not assume any conclusions of law. Further, a unit may not certify that the original proceeds of an issue will not exceed by more than 5 percent the amount necessary for the purpose of the issue. This statement uses two defined legal terms: "original proceeds" and "issue". On the other hand, a unit may certify the amount that will be received from the sale of certain obligations and the amount necessary for a particular purpose.

(C) An officer responsible for issuing the bonds must act for the issuer.

(D) In addition to the matters certified, the certification must set forth the facts and estimates on which the issuer's expectations are based and state that, to the best of the knowledge and belief of the certifying officer, the issuer's expectations are reasonable.

(E) (*1*) If the temporary period for a construction issue is more than 3 years but not more than 5 years, the issuer must commission an independent architect or engineer to prepare a study of the planned construction.

(*2*) The study prepared by the architect or engineer must accompany the certification and must include an estimated completion date for each stage of the construction.

(F) Subsequent events do not affect a certification made in accordance with this subdivision.

(iv)(A) If a certification contains a material misrepresentation, the Commissioner may disqualify the issuer. The Commissioner will publish notice that the issuer is disqualified in the Internal Revenue Bulletin. The disqualification will not affect bonds issued before the notice is published.

(B) An issuer that is disqualified may not certify an issue under subdivision (ii) or (iii) of this subparagraph.

(C) The Commissioner will give an issuer reasonable opportunity to be heard before it is disqualified.

(D) If appropriate, the Commissioner may requalify an issuer. The Commissioner will publish notice that the issuer has been requalified in the Internal Revenue Bulletin.

* * * * *

(v) * * *

Example (*3*). (i) The facts are the same as in example (1)(i) except that the bonds are issued on July 5, 1980, and all other dates are appropriately adjusted. City A includes in the bond indenture a certification which contains a statement that 85 percent of the receipts from sale of the bonds will be used for construction costs by July 5, 1983.

(ii) Construction of the water treatment facility was determined by the Environmen-

tal Protection Agency to have certain adverse environmental effects. Consequently, work on the project was halted and the faciilty was redesigned to avoid the effects with the result that 85 percent of the receipts from sale of the bonds will not be expended for project costs by July 5, 1983. The certification is conclusive as to the issuer's reasonable expectations that 85 percent of receipts will be expended for construction costs by July 5, 1983.

(iii) Under the circumstances described in subdivision (ii), city A has not made a material misrepresentation in the certification which would permit the Commissioner to disqualify city A under subdivision (iv) of this subparagraph. If, however, city A did not actually expect that 85 percent of the receipts from sale of the bonds would be used for construction costs by July 5, 1983, the Certification would contain a material misrepresntation. Under those circumstances, the Commissioner may disqualify city A.

Example (4). On January 1, 1980, city A sells $5 million of 6 percent refunding bonds. City A certifies the bonds in the manner provided in subdivision (iii) of this subparagraph. In addition, attorney X gives an opinion that the bonds are not arbitrage bonds. In connection with the refunding issue, city A makes use of a certain artifice or device. This artifice or device is not identified as specifically prohibited by section 103(c) or the regulations thereunder. However, as a result of the artifice or device, city A is able to exploit the difference between tax-exempt and taxable interest rates to gain a financial advantage. This financial advantage serves as a material inducement for city A to sell the refunding bonds, or to issue more refunding bonds than would be otherwise be necessary, or to allow the refunding bonds to remain outstanding longer than would otherwise be necessary. Based on these facts, the artifice or device is an attempt to defeat purposes of section 103(c). Because section 103(c) and the regulations thereunder are intended to prevent the use of such an artifice or device, the legal conclusion as reached by attorney X is erroneous. Therefore, the refunding bonds are arbitrage bonds despite the certification.

(b) *Definition.* * * *

(1) *Arbitrage bonds.* * * *

(ii) A major portion of the proceeds of an issue is any amount which at any time exceeds 15 percent of the original face amount of the issue. * * * See § 1.103-14 (e) for special rules that apply to refunding issues. * * *

* * * * *

(5) *Materially higher.* * * *

(iii) (A) * * * Before the prior issue is discharged, materially higher than the yield on a refunding issue that is issued after September 1, 1978, means higher than—

$$Y+(\$25,000\times Y)/(P)$$

where—

(*1*) "Y" stands for the yield on the issue, and

(*2*) "P" stands for the amount of the original proceeds of the issue.

* * * * *

(v) The following example illustrates the application of paragraph (b)(5)(iv) of this section:

Example. On July 1, 1977, city A sells $10 million of 7-percent Series A revenue bonds and $5 million of 4-percent Series B special obligation bonds at par in the full cash defeasance of a prior issue. Assuming that under State law and the bond indenture agreement the amount necessary to defease the prior issue is only $10 million, paragraph (b)(5)(iv) of this section applies to both the Series A and the Series B issue. Thus, for example, if transferred proceeds of the Series A issue are invested at more than 7 percent, the Series A bonds are arbitrage bonds.

(vi) Despite anything in § 1.103-13 (b) or (e) to the contrary, § 1.103-13 (b) (5)(vii) applies to any acquired obligation that is allocated to amounts treated as proceeds under § 1.103-13(g) (relating to invested sinking funds).

(vii) Materially higher than the yield on a issue means higher than—

$$Y+(\$5,000\times Y)/(F)$$

where—

(a) "Y" Stands for the yield on the issue, and

(B) "F" stands for the maximum amount that will be accumulated in a sinking fund (or funds) for the issue.

* * * * *

(10) *Issue.* (i) * * *

(C) Will be paid out of substantially the same source of funds (or will have substantially the same claim to be paid out of substantially the same source of funds).

(11) *Discharged.* An issue is "discharged" when all obligations that were part of the issue are retired.

(c) *Computation of yield*—(1) *In general.* * * *

(iii) * * *

(D) The market price of a certificate of deposit issued by a commercial bank may be determined as the bona fide bid price quoted by a dealer who maintains an active secondary market in such certificates of deposit.

(iv) The rules in paragraph (c)(1)(iii) shall also apply to acquired obligations that are allocable to amounts treated as proceeds under paragraph (g) of this section.

* * * * *

(4) *Student loans.* Payments made by the Commissioner of Education pursuant to section 127(a) of the Education Amendments of 1976 are not taken into account in determining yield on student loan notes.

(5) *Certain administrative costs.* If—

(A) An issue is issued after September 1, 1978,

(B) The original proceeds of the issue are used to purchase acquired purpose obligations, and

(C) The obligor pays administrative costs of issuing, carrying, or repaying the issue,

then such payments shall not be taken into account in determining yield. The proceding sentence applies whether or not such payments are made from bond proceeds, and whether or not such payments merely reimburse the issuer.

* * * * *

(d) *Obligations issued after September 1, 1978—*

(1) *In general.* Despite anything in paragraph (c) to the contrary, the rules in this paragraph apply to obligations issued after September 1, 1978.

(2) *Administrative costs.* Administrative costs may not be taken into account in determing yield.

(3) *Purchase price.* (i) If an issue of governmental obligations is sold to the public, the term "purchase price" means the initial offering price to the public (excluding bond houses, brokers, and other intermediaries).

(ii) If an issue of governmental obligations is privately placed, the purchase price of each obligation is the price paid by the first buyer of the obligation. For this purpose, the term "first buyer" does not include any bond house, broker, or other intermediary.

(iii) If the purchase price of an obligation is unreasonably low, then the yield on the obligation shall be determined as if its purchase price were equal to its fair market value on the date of issue.

(4) *Illustrations.* The following examples illustrate the application of this paragraph:

Example (1). On January 1, 1979, city A sells a $10 million issue of 10-year, 6-percent revenue bonds. The purchase price of the issue is $9,800,000. The yield on the revenue bonds is 6.27 percent. Administrative costs are not taken into account in determining yield.

Example (2). On January 1, 1980, city B sells $20 million of 5-percent general obligation bonds to underwriter X for $19,800,000. Underwriter X offers and sells the entire issue to the public at par. The purchase price of the issue is $20 million. The yield on the issue is 5 percent. The underwriter's spread is not taken into account in determining yield.

Example (3). On January 1, 1981, city C sells $12 million of revenue bonds and uses part of the proceeds to buy a 6-percent Treasury note at par. The yield on the Treasury note is 6 percent. Administrative costs are not taken into account in determining yield.

* * * * *

(f) *Allocations of investments and expenditures.* * * *

(4) *Requirements.* * * *

(iv) Obligations purchased with amounts treated as proceeds under § 1.103-13(g) (relating to invested sinking funds) must be allocated to such amounts.

* * * * *

(g) *Invested sinking funds—*

(1) *Effective date.* (i) Except as provided in § 1.103-13(g)(1)(ii), this paragraph applies to bonds sold after May 2, 1978.

(ii) This paragraph does not apply to bonds sold before May 16, 1978, if—

(A) The sale of the bonds was either authorized or approved by the governing body of the governmental unit issuing the bonds or by the voters of such governmental unit,

(B) Notice of sale of the bonds was given as required by law, or

(C) A bona fide written offering statement (or preliminary offering statement) was circulated to potential purchasers, before May 3, 1978; *Provided,* That the bonds are issued within a reasonable time after they are sold.

(2) *In general.* Amounts accumulated in a sinking fund for an issue are treated as proceeds of the issue.

(3) *Sinking fund.* The term "sinking fund" includes a debt service fund, or any similar fund, to the extent that the issuer reasonably expects to use the fund to pay principal or interest on the issue.

(4) *Withdrawals.* Amounts withdrawn from a sinking fund are not treated as proceeds under this paragraph after they are withdrawn.

(5) *Prior issue.* Proceeds of the prior issue are not treated as proceeds of a refunding issue under this paragraph. See, however, § 1.103-14(e)(2)(ii) for rules relating to transferred proceeds.

PAR. 2. Section 1.103-14 is amended as follows:

1. Wherever "section 103(d)" appears as a reference or as part of a reference, such reference is changed to "section 103(c)".

2. New paragraphs (b)(9), (b)(10), and (b)(11) are added to read as set forth below.

3. In paragraph (c)(2)(iii), "anticipated tax or other revenues" is replaced by "issue."

4. In paragraph (e)(1-A)(iv), "Example (v)" is corrected to read "Example (1)" and "special obligation bonds" is replaced by "guaranteed revenue bonds" in example (3).

5. Two new sentences are added in place of the fourth sentence in paragraph (e)(2)(ii) to read as set forth below.

6. Paragraphs (e)(4)(iii) and (e)(5)(iii) are revised by inserting "paragraph (e)(1-B) (iii) and (iv)" in place of "paragraph (e)(1)(ii)".

§ 1.103-14 Temporary investments, reserve fund, and refunding issues.

* * * * *

(b) *Temporary period.* * * *

(9) *Invested sinking funds.* Thirty days is the temporary period for amounts treated as proceeds of an issue solely because they are accumulated in a sinking fund for the issue (see § 1.103-13(g)). The temporary period begins on the date of accumulation.

(10) *Debt service fund.* Despite subparagraph (9) of this paragraph, 13 months is the temporary period for amounts contributed to a bona fide debt service fund; provided that each such amount is spent before the end of the temporary period.

(11) *Interest.* Despite subparagraph (9) of this paragraph, one year is the temporary period for amounts received from investment of a sinking fund.

* * * * *

(e) *Refunding issue.* * * *

(2) *Definitions.* * * *

(ii) * * * Generally, it is not necessary to apply the preceding two sentences for purposes of § 1.103-14(e)(4) and (5). (This is because of § 1.103-14(e)(6), which treats different parts of the prior issue as separate issues.)

* * * * *

PAR. 3. Section 1.103-15 is amended as follows:

1. The portion of paragraph (c)(1) that follows subdivision (iv) is revised to read as set forth below.

2. Paragraphs (g), (h), and (i) are redesignated as paragraphs (h), (i), and (j) respectively, paragraph (j) is redesignated as paragraph (l), and new paragraphs (g) and (k) are added to read as set forth below.

3. Example (4) of paragraph (l) as redesignated is revised by deleting "$35,000" from item (c)(8) and "1980" from item (d)(4) and inserting respectively, "$15,000" and "1990" in lieu thereof.

§ 1.103-15 Excess proceeds.

* * * * *

(c) *Excess proceeds.*—(1) *In general.* * * *

(v) Proceeds that will be used to pay the administrative costs of—

(A) Repaying the prior issue,

(B) Carrying and repaying the refunding issue, or

(C) Purchasing, carrying, and selling or redeeming obligations acquired with the proceeds of the refunding issue;

(vi) Transferred proceeds that will used for the purpose of the prior issue;

(vii) Investment proceeds derived from the investment of a reasonably required reserve or replacement fund;

(viii) Interest on acquired purpose obligations; and

(ix) Amounts treated as proceeds solely because they are accumulated in a sinking fund for the refunding issue (see § 1.103-13(g)).

* * * * *

(g) *Fourth exception; temporary period.* This section shall not apply to a refunding issue if the prior issue is discharged within 180 days after the refunding bonds are issued.

* * * * *

(k) *Invested sinking funds.* If a refunding issue is sold after the effective date of § 1.103-13(g), then amounts accumulated in a sinking fund for the prior issue are treated as proceeds of the refunding issue for purposes of this section.

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-12380 Filed 5-3-78; 10:12 am]

[4830-01]

[26 CFR Part 1]

[LR-1671]

INCOME TAX

Arbitrage Bonds; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed amendments to the arbitrage bonds regulations.

DATES: The public hearing will be held on July 25, 1978, beginning at 10 a.m. Outlines of oral comments must be delivered or mailed by July 7, 1978.

ADDRESS: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The outline for oral comments on the proposed amendments to the regulations should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-1671), 1111 Constitution Ave. NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224; telephone, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the arbitrage bonds regulations under section 103(c) of the Internal Revenue Code of 1954. These proposed amendments appear in this issue of the FEDERAL REGISTER.

On May 3, 1973, the FEDERAL REGISTER published proposed Income Tax

Regulations (26 CFR Part 1) under section 103 of the Internal Revenue Code of 1954 (38 FR 10944). The proposed regulations were revised by notices of proposed rulemaking published in the FEDERAL REGISTER for December 3, 1975 (40 FR 56488), October 9, 1976 (41 FR 47679), May 31, 1977 (42 FR 27610), and June 9, 1977 (42 FR 29517) and corrected by notices published in the FEDERAL REGISTER for May 11, 1973 (38 FR 12405), December 18, 1975 (40 FR 58656), November 24, 1976 (41 FR 51840), and June 21, 1977 (42 FR 31462). The proposed regulations which are the subject of this hearing further revise the proposed regulations.

The rules of § 601.601(a)(3) of the Statement of Procedural Rules (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed amendments and who desire to present oral comments at the hearing on the proposed amendments must submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject. As stated above, this outline must be delivered or mailed by July 7, 1978. Outlines of oral comments will be acknowledged by telephone upon receipt. Those who submit outlines but receive no acknowledgment within a reasonable amount of time after mailing should contact Mr. Bradley or Mr. Hayden.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time taken by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, those attending the hearing cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

Dated: May 3, 1978.

ROBERT A. BLEY,
Director, Legislation and Regulations Division.

[FR Doc. 78-12489 Filed 5-3-78; 4:47 pm]

[4830-01]

[26 CFR Part 1]

[LR-141-76]

INCOME TAX

Depreciation of Property Attributable To Rehabilitation Expenditures Incurred With Respect to Low-Income Rental Housing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed rules relating to the depreciation of property attributable to expenditures incurred to rehabilitate low-income rental housing. The proposed regulations reflect amendments made to section 167(k) of the Code by the Tax Reform Act of 1976 and the Act of November 12, 1977.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 5, 1978. The amendments generally apply to property attributable to rehabilitation expenditures paid or incurred after December 31, 1975. In addition, the amendments propose to extend the time for making an election with respect to property attributable to expenditures paid or incurred after December 31, 1975, until 90 days after the amendments are adopted.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (LR-141-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Charles M. Whedbee of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 Attention: CC:LR:T (202-566-3487) (Not a toll-free call).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 167(k) of the Code relates to the depreciation of property attributable to expenditures to rehabilitate low-income rental housing. The Tax Reform Act of 1976 (Pub. L. 94-455) and the Act of November 12, 1977 (Pub. L. 95-171) extended the general cut-off date for qualifying expenditures from January 1, 1976, to January 1, 1979. In addition, certain expenditures incurred pursuant to a binding contract entered into before January 1, 1979, or with respect to low-income rental housing the rehabilitation of which has begun before January 1, 1979, are deemed to be incurred before January 1, 1979. Because these amendments clearly indicate a congressional policy to stimulate rehabilitation of low-income housing, the proposed amendments to the regulations utilize a somewhat broader approach to the determination of a binding contract entered into before January 1, 1979, than may be found in regulations under other sections of the Code where different congressional objectives are apparent.

The 1976 Act also increased to $20,000 the per-dwelling-unit ceiling on qualifying expenditures, effective with respect to expenditures incurred after December 31, 1975. The 1976 Act also requires that the Secretary of the Treasury (or his delegate) define, by regulations, families and individuals of low or moderate income in a manner consistent with the leased housing program under section 8 of the United States Housing Act of 1937. The proposed amendments to the regulations reflect these amendments to section 167(k) of the Code.

The proposed amendments also make clear that a dwelling unit held for occupancy by individuals or families of low or moderate income may qualify as low-income rental housing, even though other dwelling units in the same building are held for occupancy by persons not of low or moderate income.

The proposed amendments are to be issued under the authority contained in section 167(k)(3)(B) of the Internal Revenue Code of 1954 (83 Stat. 651, 90 Stat. 1530; 26 U.S.C. 167(k)(3)(B)) and section 7805 of the Internal Revenue Code of 1954 (68 A Stat. 917; 26 U.S.C. 7805).

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations was Charles M. Whedbee of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

PARAGRAPH 1. Section 1.167(k) is deleted.

PAR. 2. Section 1.167(k)-1 is amended as follows:

1. Paragraph (a)(1) is amended by striking out "January 1, 1975" in the first sentence and inserting in lieu thereof "January 1, 1979".

2. The first sentence of paragraph (a)(2) is amended by striking out "December 31, 1974" and inserting in lieu thereof "December 31, 1978".

3. The second sentence of paragraph (a)(2) is amended by striking out "January 1, 1975" and inserting in lieu thereof "January 1, 1979".

4. A new paragraph (d) is added at the end to read as set forth below.

§ 1.167 (k)-1 Depreciation of property attributable to rehabilitation expenditures.

* * * * *

(d) *Expenditures deemed incurred before January 1, 1979.* For purposes of paragraph (a) of this section—

(1) Rehabilitation expenditures (including rehabilitation expenditures that are treated as paid or incurred by the taxpayer by reason of paragraph (b)(1) of this section) that are incurred pursuant to a binding contract entered into before January 1, 1979, are deemed to be incurred before January 1, 1979. The contract must require (i) the rehabilitation to be performed for the taxpayer (or the person or persons other than the taxpayer described in paragraph (b)(1) of this section) in accordance with his specifications, or (ii) the taxpayer (or the person or persons other than the taxpayer described in paragraph (b)(1) of this section) to perform the rehabilitation (or to have the work performed for him in accordance with his specifications). The contract, as of December 31, 1978, must also specifically identify the existing building (or buildings) in connection with which the rehabilitation expenditures are to be incurred, and the expenditures must be incurred in connection with that building (or buildings). A contract may be binding, for purposes of section 167(k)(3)(D) and this section, even if it is subject to the happening of certain contingencies (such as the obtaining of financing from a third party) which have not occurred by January 1, 1979: *Provided*, That the happening of the contingencies is not within the unrestricted control of the taxpayer (or the person or persons other than the taxpayer described in paragraph (b)(1) of this section) and the contingencies in fact occur. In any event, a contract that does not represent a bona fide agreement negotiated at arms-length shall not be considered a binding contract for purposes of section 167(k)(3)(D). For purposes of section 167(k)(3)(D), a binding contract includes an agreement, entered into pursuant to section 8 of the United States Housing Act of 1937, between the taxpayer (or the person or persons other than the taxpayer described in paragraph (b)(1) of this section) and the Department of Housing and Urban Development ("HUD") or a public housing agency ("PHA") providing that upon completion of rehabilitation in accordance with the taxpayer's final proposal, HUD or the PHA will enter into a housing assistance payments contract with the taxpayer (or such other person or persons). For purposes of the preceding sentence, "agreement", "final proposal", "public housing agency", and "housing assistance payments contract" have the same meaning as those terms have in 24 CFR Part 881 (relating to substantial rehabilitation under the section 8 housing assistance payments program).

(2) Rehabilitation expenditures (including rehabilitation expenditures that are treated as having been paid or incurred by the taxpayer by reason of paragraph (b)(1) of this section) incurred with respect to low-income rental housing the rehabilitation of which has begun before January 1, 1979, are deemed to be incurred before that date. For purposes of determining whether rehabilitation has begun before January 1, 1979, each dwelling unit (see § 1.167(k)-3(c)) shall be considered separately. Rehabilitation begins upon the commencement of physical work at the site of the dwelling unit, as distinguished from the beginning of, or engaging in, other preliminary activities, such as the preparation of architect's sketches. The determination of whether physical work has begun shall be based upon all the facts and circumstances of a particular case. In general, where the physical work which has commenced before January 1, 1979, represents rehabilitation expenditures which are allocable under § 1.167(k)-2(d) to more than one dwelling unit (such as the cost of replacing the roof of an existing structure), such work may be treated as having been done on units to which the expenditures are allocable.

PAR. 3. Section 1.167(k)-2 is amended as follows:

1. The third sentence of paragraph (a) is amended by striking out "1974" and inserting in lieu thereof "1978".

2. The first two sentences of paragraph (c)(1) are deleted and four new sentences are inserted in lieu thereof to read as set forth below.

3. The last sentence of paragraph (c)(1) is amended by striking out "limitation" and inserting in lieu thereof "limitations".

4. Paragraph (c)(2) is amended by striking out "following example:" and *"Example."* and inserting in lieu thereof "following examples:" and *"Example* (1).", respectively.

5. A new example (2) is inserted after example (1) in paragraph (c)(2), to read as set forth below.

6. Paragraph (e) is amended as follows:

(a) Subparagraph (1) is amended by striking out "For purposes of" in the first sentence and inserting in lieu thereof "Except as provided in paragraph (e)(2) of this section, for purposes of".

(b) Subparagraph (2) is redesignated as subparagraph (3).

(c) A new subparagraph (2) is added after subparagraph (1), to read as set forth below.

§ 1.167(k)-2 Limitations.

* * * * *

(c) *Maximum amount.* (1) In general, the maximum amount of rehabilitation expenditures paid or incurred by the taxpayer with respect to any dwelling unit which may be taken into account under section 167(k) is $20,000. However, in the case of rehabilitation expenditures incurred before January 1, 1976, the amount of such expenditures paid or incurred by the taxpayer with respect to any dwelling unit which may be taken into account under section 167(k) is limited to $15,000. The rules in § 1.167(k)-1(a)(2) shall apply in determining whether an expenditure is incurred before January 1, 1976. Property attributable to amounts in excess of $20,000 (or, if applicable, $15,000) may qualify for the reasonable allowance provided by section 167(a). * * *

(2) * * *

Example (2). X, a calendar year taxpayer on the cash receipts and disbursements method of accounting, spends a total of $22,000 for rehabilitation of one dwelling unit in an existing building held for low-income rental housing. X would be considered, under the accrual method of accounting, to have incurred $19,000 of the expenditures in 1975 and $3,000 in 1976. The expenditures qualify as rehabilitation expenditures under § 1.167(k)-3. Because of the $15,000 limitation with respect to rehabilitation expenditures incurred before January 1, 1976, property attributable incurred in 1975 qualifies for an election under section 167(k). The $4,000 of expenditures incurred in 1975 with respect to which X cannot make a valid election is not taken into account in applying the $20,000 limitation. Therefore, property attributable to the entire $3,000 of expenditures incurred in 1976 qualifies for an election under section 167(k).

* * * * *

(e) *Special rule.* * * *

(2) In determining, for purposes of the $15,000 limitation described in the second sentence of paragraph (c)(1) of this section, whether a rehabilitation expenditure is incurred before January 1, 1976, a rehabilitation expenditure treated as having been paid or incurred by the taxpayer by reason of § 1.167(k)-1(b)(1) shall be deemed to have been incurred on the date the expenditure would be considered incurred under the accrual method of accounting by the person or persons who actually incurred the expenditure, regardless of the method of accounting used by that person or persons.

* * * * *

PAR. 4. Section 1.167(k)-3 is amended as follows:

1. Paragraph (b)(1)(i) is amended by inserting two new sentences after the first sentence to read as set forth below.

2. Paragraphs (b)(2) and (b)(3) are revised as set forth below.

3. Paragraph (b)(4) is amended by striking out "close of the certification year" each place it appears and inserting in lieu thereof "beginning of the certification year", by amending the fourth sentence as set forth below, and by deleting the fifth and sixth sentences.

4. Paragraph (b)(5) is redesignated as paragraph (b)(6) and a new paragraph (b)(5) is added to read as set forth below.

5. Example (1) and Example (2) in paragraph (b)(6), as redesignated, are revised as set forth below.

§ 1.167(k)-3 Definitions.

* * * * *

(b) *Low-income rental housing*—(1) *In general.* (i) * * * A dwelling unit held for occupancy by families and individuals of low or moderate income may qualify as low-

income rental housing even though other dwelling units in the same building are held for occupancy by persons who are not of low or moderate income. On the other hand, a dwelling unit held for occupancy by persons who are not of low or moderate income does not qualify as low-income rental housing, even though other dwelling units in the same building are held for occupancy by families and individuals of low or moderate income. * * *

* * * * *

(2) *Definition of low or moderate income.* The occupants of a dwelling unit are considered families and individuals of low or moderate income for purposes of section 167(k) only if their adjusted income (computed in the manner prescribed in paragraph (b)(3) of this section) does not exceed 80 percent of the median income for the area, as determined with adjustments for smaller and larger families by the Secretary of Housing and Urban Development for the purposes of applying section 8(f)(1) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f(f)(1)), except that if, for purposes of applying such section, the Secretary of Housing and Urban Development establishes an income ceiling higher or lower than 80 percent of the median for the area, the higher or lower income ceiling shall apply. Notwithstanding the preceding sentence, the occupants of a dwelling unit shall not be considered as individuals and families of low or moderate income if all the occupants are students (as defined in section 151(e)(4)), no one of whom is entitled to file a joint return under section 6013. All determinations under this subparagraph shall be made as of the first day of the certification year (as defined in paragraph (b)(3) of this section).

(3) *Adjusted income.* (i) The adjusted income of a family or individual is the anticipated total amount income of the family or individual for the certification year, determined in accordance with the criteria prescribed by the Secretary of Housing and Urban Development under section 8(f)(3) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f(f)(3)), for purposes of determining whether a family is a lower-income family within the meaning of section 8(f)(1) of the Act. The adjusted income of a family or individual shall be computed solely from the income certifications required by paragraph (b)(4) of this section and shall be computed with respect to the "certification year" of the person. Adjusted income is not affected by income earned or received during the certification year that is not included in the income certification. The "certification year" for any person is the 12-month period which begins on the later of (A) the date on which the property attibutable to the expenditures allocated to the dwelling unit occupied by the person is placed in service (see §1.167(k)-1(b)(3)), or (B) the date on which the person first occupies the unit on a rental basis, or signs a lease with respect to the unit, whichever occurs first. Adjusted income must be determined with respect to the actual occupants of the dwelling unit. For purposes of the preceding sentence, if any income of a family member who is not living in the dwelling unit would be taken into account under the criteria prescribed by the Secretary of Housing and Urban Development referred to in the first sentence of this subparagraph, that person shall be considered to be an occupant of the dwelling unit. The term "family", for purposes of section 167(k), means two or more persons related by blood, marriage, or operation of law.

(ii) The principles of this subparagraph may be illustrated by the following example:

Example. Family X first signs a lease on a rehabilitated dwelling unit on January 1, 1977, which the family first occupies on January 25, 1977. All expenditures with respect to the rehabilitation of the dwelling unit were paid or incurred by the taxpayer after December 31, 1975.

The certification year for members of family X is the 12-month period beginning on January 1, 1977. All income earned by family X in 1976 is disregarded. Instead, the determination of adjusted income shall be made with respect to the total anticipated annual income of the family for the calendar year 1977, computed in accordance with the criteria prescribed by the Secretary of Housing and Urban Development referred to in the first sentence of this subparagraph.

(4) *Income certification.* * * * The income certification shall contain a statement of the anticipated total annual income for the certification year of each person who proposes to live in the dwelling unit during the certification year, the number of minors who propose to live in the dwelling unit during the certification year, the anticipated total annual income of such minors, and a description of any payments expected to be received during the certification year which are not considered to be income, all determined in accordance with the criteria prescribed by the Secretary of Housing and Urban Development referred to in paragraph (b)(3) of this section. * * *

(5) *Effective date.* Paragraph (b)(2), (3), and (4) of this section shall apply to property attributable to expenditutes which are paid or incurred after December 31, 1975. (For purposes of applying this subparagraph, rehabilitation expenditures treated as having been paid or incurred by the taxpayer by reason of §1.167(k)-1(b) shall be deemed to have been paid or incurred on the date on which the expenditures were actually paid or incurred, determined in accordance with the method of accounting used by the person that actually paid or incurred the expenditures.) In the case of property attributable to expenditutes paid or incurred before January 1, 1976, the rules in 26 CFR 1.167(k)-3(b) (2), (3), and (4), revised as of April 1, 1977, shall continue to apply.

(6) *Examples.* * * *

Example 1. The median family income in a particular area for a family of four, as established for the purposes of applying section 8(f)(1) of the United States Housing Act of 1937, is $12 000. During 1976, the taxpayer spends in excess of $3,000 per unit in rehabilitating three two-bedroom dwelling units, X, Y, and Z. All the units are placed in service on January 1, 1977, and are advertised for rental at $200 per month. Unit X is rented at this price to tenant A and unit Y is rented to tenant B. A and B each is married and each has two children. At the time of the signing of the lease, tenant A certifies that the family's adjusted income for the certification year (the 12-month period beginning on the date the lease is signed), computed under paragraph (b)(3) of this section, is $9,000. Tenant B, at the time of signing the lease, certifies that the family's adjusted income is $10,000 for the certification year. Assuming that the Secretary of Housing and Urban Development has not established an income ceiling higher or lower than 80 percent of median for the area for purposes of applying section 8(f)(1) of the United States Housing Act of 1937, the low or moderate income level for the purpose of this paragraph is $9,600 (80 percent of the $12,000 median income for the area). Since tenant A's adjusted income of $9,000 does not exceed this amount, rehabilitation expenditures allocated to the dwelling unit rented to tenant A could qualify under section 167(k). However, the rehabilitation expenditures allocated to the dwelling unit rented to tenant B could not qualify, since tenant B's adjusted income ($10,000) is in excess of the low or moderate income level for the area.

Example 2. The facts are the same as in example (1). Eight months after signing the lease, tenant A receives a promotion that was not anticipated when the lease was signed. Because of the unanticipated promotion, tenant A's actual income for the certification year is $9,800, which is more than the income ceiling ($9,600). Even though A's adjusted income would not have qualified if the promotion had been anticipated when the lease was signed, the original election with respect to property contained in unit X will remain valid as long as tenant A occupies the unit. Unit Z, even though vacant throughout 1977, will be considered low-income rental housing because the rental at which the unit is offered ($2,400 per year) does not exceed $2,800, *i.e.*, 30 percent of $9,600, the low or moderate income level for a family of four.

* * * * *

PAR. 5. Section 1.167(k)-4 is amended by adding a new paragraph (f) at the end thereof, to read as set forth below.

§ 1.167(k)-4 Time and manner of making election.

* * * * *

(f) *Extension of time for election.* In the case of property attributable to expenditures paid or incurred after December 31, 1975, a taxpayer will be permitted to make an election under section 167(k) (and file the statement required for subsequent taxable years by paragraph (b)(2) of this section) on or before [the 90th day after the date this notice of proposed rulemaking is adopted as a Treasury decision], notwithstanding the fact that the period prescribed by paragraph (c) of this section for filing an election for the taxable year (or for filing the statement required for a subsequent year) has expired.

JEROME KURTZ,
Commissioner of Internal Revenue.

§ 1.167(k)-1 Depreciation of property attributable to rehabilitation expenditures.

(a) *In general.* (1) In the case of property attributable to rehabilitation expenditures incurred with respect to low-income rental housing after July 24, 1969, and before January 1, 1979, a

taxpayer may elect under section 167(k) to compute the depreciation deduction provided by section 167(a) by using the straight line method, a useful life of 60 months, and no salvage value, in lieu of any other method of computing the reasonable allowance referred to in section 167(a). The expenditures must meet the conditions and limitations contained in §§ 1.167(k)-2 and 1.167(k)-3 and the election must be made as prescribed in § 1.167(k)-4. If a proper election with respect to any portion of the basis of property is in effect under section 167(k), no deduction for depreciation or amortization shall be allowed with respect to that portion of the basis of such property under any other provision of the Code. For example, the additional first-year depreciation allowance for small business allowed under section 179 shall not be allowed with respect to that portion of the basis of property for which a proper election under section 167(k) is in effect. The provisions of this subparagraph may be illustrated by the following example:

Example. In 1970, a calendar-year taxpayer buys an existing building and spends $60,000 to rehabilitate 10 dwelling units. The property attributable to the expenditures is placed in service on January 1, 1971. If the conditions of § 1.167(k)-2 (relating to minimum and maximum limitations) and § 1.167(k)-3 (relating to definitions) are met in 1971, the taxpayer may make an election under section 167(k) and claim a depreciation deduction of $12,000 (12/60×$60,000) for 1971.

(2) Any property attributable to expenditures which are incurred before July 25, 1969, or after December 31, 1978, will not qualify for an election under section 167(k). For purposes of determining whether rehabilitation expenditures are incurred after July 24, 1969, and before January 1, 1979, each dwelling unit (see § 1.167(k)-3(c)) shall be considered separately. An expenditure is incurred, for purposes of this section, on the date such expenditures would be considered incurred under the accrual method of accounting, regardless of the method of accounting used by the taxpayer with respect to other items of income and expense. Thus, even though a taxpayer is on the cash receipts and disbursements method of accounting, expenditures shall be considered incurred, for purposes of this section, on the date that all events have occurred which establish the fact of the taxpayer's liability for such expenditures, and the amount of such expenditures can be determined with reasonable accuracy. The method used by a taxpayer on the cash receipts and disbursements method of accounting, in determining when expenditures are incurred, will be acceptable if it accords with any generally recognized and accepted accrual basis income tax accounting principles. The method so adopted must be applied consistently by the taxpayer for purposes of this subparagraph. (See section 446(c) and § 1.446-1(c)(1)(ii).) The principles of this subparagraph may be illustrated by the following example:

Example. On June 30, 1969, A, a taxpayer on the cash receipts and disbursements method of accounting, signs a contract with a builder for the rehabilitation of an apartment house. If (under this subparagraph) any expenditures under the contract are considered incurred before July 25, 1969, property attributable to such expenditures does not qualify for the election under section 167(k).

(3) If an election under section 167(k) is made with respect to property, see sections 1245 and 1250 for treatment of gain on disposition of the property. See section 57(a)(2) for treatment of depreciation under section 167(k) as an item of tax preference, for purposes of the minimum tax contained in section 56.

(b) *Rehabilitation expenditures treated as paid or incurred by the taxpayer.* (1) Generally, the taxpayer is considered to have paid or incurred rehabilitation expenditures only if the rehabilitation is performed by him or for him in accordance with his specifications. However, where rehabilitation expenditures are paid or incurred by a person (or persons) and the taxpayer acquires the property attributable to such expenditures (or an interest therein) before such property is placed in service, the taxpayer will be treated as having paid or incurred the expenditures and the portion of the basis of property attributable to such expenditures may be included in an election by the taxpayer under section 167(k). The rehabilitation expenditures must meet the requirements of this section and § 1.167(k)-2 (relating to minimum and maximum limitations) and § 1.167(k)-3 (relating to definitions). This paragraph shall apply only if the rehabilitated property is not placed in service during the period beginning with the date the expenditures were paid or incurred and ending on the date the taxpayer acquired an interest in the property. For example, assume that A pays or incurs rehabilitation expenditures of $10,000 with respect to an existing building on January 1, 1971, and then sells the building to B on June 1, 1971. If the property attributable to the expenditures is not placed in service by A during the period from January 1, 1971, to June 1, 1971, B will be treated as having paid or incurred the expenditures.

(2) The amount of rehabilitation expenditures treated as paid or incurred by the taxpayer under this paragraph is the lesser of—

(i) The rehabilitation expenditures paid or incurred before the date on which the taxpayer acquired an interest in the property attributable to the expenditures, or

(ii) The taxpayer's cost or other basis for the property attributable to the rehabilitation expenditures paid or incurred before such date.

The portion of the basis of property which is not attributable to rehabilitation expenditures paid or incurred by the taxpayer may not be depreciated under section 167(k), but may be subject to depreciation under section 167(a). Thus, a portion of the basis of property may be subject to depreciation under the method provided by section 167(k) and another portion of the basis of that property may be subject to depreciation under a method provided by section 167(b). For purposes of section 167(k), property is acquired when reduced to physical possession, or control, that is, on the date the taxpayer first bears the burdens and enjoys the benefits of ownership.

(3) (i) Property is placed in service on the date that it is first placed in a condition or state of readiness and availability for a specifically assigned function, whether in the production of income, in a tax-exempt activity, or in a personal activity. For purposes of determining when property attributable to rehabilitation expenditures is placed in service, each dwelling unit shall be considered separately. Rehabilitated property which is attributable solely to a single dwelling unit is placed in service on the date that dwelling unit is placed in service. Rehabilitated property which relates to more than one dwelling unit, or which relates to common areas or related facilities and is allocated to more than one dwelling unit under § 1.167(k)-2(d), will be considered as placed in service on the earliest date a significant number of such units are placed in service. For example, if a taxpayer reconstructs or replaces the roof of a building with 20 dwelling units, the property relates to the entire building and, accordingly, the new or reconstructed roof is placed in service on the earliest date a significant number of such dwelling units are placed in service. As a further example, assume that the first floor of a three-story building is operated for commercial purposes, and that the taxpayer rehabilitates the remaining two floors for dwelling units. In connection with the rehabilitation, the taxpayer constructs a parking lot for the use of the occupants of the building. The expenditures for the parking lot may be considered as rehabilitation expenditures (see § 1.167(k)-3(b)) and the property (parking lot) attributable to the expenditures allocated to dwelling units is treated as placed in service on the date the parking lot is available for use by the tenants of a significant number of such dwelling units.

(ii) If dwelling units are occupied on a rental basis at the same time that re-

habilitation expenditures allocated to those units are paid or incurred, the property attributable to these expenditures will be considered placed in service on the date that the rehabilitation of such units is substantially completed.

(4) The principles of this paragraph may be illustrated by the following examples:

Example (1). A, a taxpayer using the cash receipts and disbursements method of accounting, begins the rehabilitation of a three-story building on January 11, 1971. Prior to May 1, 1971, he pays rehabilitation expenditures of $12,000, $1,000 of which is allocated to each of 12 dwellings units in accordance with the allocation rules of § 1.167(k)-2(d). On May 3, 1971, taxpayer A sells the building, the land, and the property attributable to the rehabilitation expenditures to taxpayer B for $35,000. The purchase price is allocated as follows:

Land	$8,000
Existing building	11,000
Property attributable to rehabilitation expenditures	16,000
Total purchase price	35,000

The property attributable to the rehabilitation expenditures is placed in service by B on September 5, 1971. Taxpayer B may treat a portion of the $35,000 purchase price as rehabilitation expenditures paid or incurred by him. Since the rehabilitation expenditures paid by A ($12,000) are less than the portion of the purchase price allocable to property attributable to these expenditures ($16,000), B may treat only $12,000 as rehabilitation expenditures paid or incurred by him. The excess of the purchase price allocable to rehabilitation expenditures ($16,000) over the rehabilitation expenditures paid by A ($12,000), or $4,000, does not qualify for treatment under section 167(k), but may qualify for the allowance for depreciation provided by section 167(a).

Example (2). The facts are the same as in example (1) except that the purchase price allocable to the property attributable to rehabilitation expenditures is $10,000. Under these circumstances, taxpayer B may treat only $10,000 of A's $12,000 expenditures as rehabilitation expenditures paid or incurred by him. The excess of the rehabilitation expenditures paid by A ($12,000) over the purchase price allocable to rehabilitation expenditures ($10,000), or $2,000, does not qualify for treatment under section 167(k).

Example (3). C, a taxpayer using the cash receipts and disbursements method of accounting, begins the rehabilitation of an existing building on April 1, 1970. The building consists of five dwelling units. The tenants remain in the dwelling units during and after the rehabilitation. Assume that the units are rehabilitated individually and that unit 1 is rehabilitated first. The rehabilitation consists of painting, replacing plumbing facilities, installing light fixtures and appliances. The rehabilitation of this unit is substantially completed on May 1, 1970, and the property attributable to these expenditures is considered placed in service on that date. If the five units were rehabilitated at one time the property would be placed in service when the work was substantially completed with respect to all the units.

(c) *Election by partnership.* An election under section 167(k) with respect to property held by a partnership shall be made by the partnership. See section 703(b).

(d) *Expenditures deemed incurred before January 1, 1979.* For purposes of paragraph (a) of this section—

(1) Rehabilitation expenditures (including rehabilitation expenditures that are treated as paid or incurred by the taxpayer by reason of paragraph (b)(1) of this section) that are incurred pursuant to a binding contract entered into before January 1, 1979, are deemed to be incurred before January 1, 1979. The contract must require (i) the rehabilitation to be performed for the taxpayer (or the person or persons other than the taxpayer described in paragraph (b)(1) of this section) in accordance with his specifications, or (ii) the taxpayer (or the person or persons other than the taxpayer described in paragraph (b)(1) of this section) to perform the rehabilitation (or to have the work performed for him in accordance with his specifications). The contract, as of December 31, 1978, must also specifically identify the existing building (or buildings) in connection with which the rehabilitation expenditures are to be incurred, and the expenditures must be incurred in connection with that building (or buildings). A contract may be binding, for purposes of section 167(k)(3)(D) and this section, even if it is subject to the happening of certain contingencies (such as the obtaining of financing from a third party) which have not occurred by January 1, 1979: *Provided*, That the happening of the contingencies is not within the unrestricted control of the taxpayer (or the person or persons other than the taxpayer described in paragraph (b)(1) of this section) and the contingencies in fact occur. In any event, a contract that does not represent a bona fide agreement negotiated at arms-length shall not be considered a binding contract for purposes of section 167(k)(3)(D). For purposes of section 167(k)(3)(D), a binding contract includes an agreement, entered into pursuant to section 8 of the United States Housing Act of 1937, between the taxpayer (or the person or persons other than the taxpayer described in paragraph (b)(1) of this section) and the Department of Housing and Urban Development ("HUD") or a public housing agency ("PHA") providing that upon completion of rehabilitation in accordance with the taxpayer's final proposal, HUD or the PHA will enter into a housing assistance payments contract with the taxpayer (or such other person or persons). For purposes of the preceding sentence, "agreement", "final proposal", "public housing agency", and "housing assistance payments contract" have the same meaning as those terms have in 24 CFR Part 881 (relating to substantial rehabilitation under the section 8 housing assistance payments program).

(2) Rehabilitation expenditures (including rehabilitation expenditures that are treated as having been paid or incurred by the taxpayer by reason of paragraph (b)(1) of this section) incurred with respect to low-income rental housing the rehabilitation of which has begun before January 1, 1979, are deemed to be incurred before that date. For purposes of determining whether rehabilitation has begun before January 1, 1979, each dwelling unit (see § 1.167(k)-3(c)) shall be considered separately. Rehabilitation begins upon the commencement of physical work at the site of the dwelling unit, as distinguished from the beginning of, or engaging in, other preliminary activities, such as the preparation of architect's sketches. The determination of whether physical work has begun shall be based upon all the facts and circumstances of a particular case. In general, where the physical work which has commenced before January 1, 1979, represents rehabilitation expenditures which are allocable under § 1.167(k)-2(d) to more than one dwelling unit (such as the cost of replacing the roof of an existing structure), such work may be treated as having been done on units to which the expenditures are allocable.

§ 1.167(k)-2 Limitations.

(a) *In general.* The amount of rehabilitation expenditures that may be taken into account with respect to any dwelling unit shall be subject to the limitations described in paragraphs (b) and (c) of this section. Rehabilitation expenditures treated as paid or incurred by the taxpayer by reason of § 1.167(k)-1(b) shall be taken into account in applying the limitations of this section. Rehabilitation expenditures incurred before July 25, 1969, or after December 31, 1978, will be taken into account in applying the limitation of paragraph (b) of this section. In the case of a partnership, these limitations shall apply to the partnership, not to the individual partners. The taxpayer shall maintain detailed records which permit specific identification of the rehabilitation expenditures paid or incurred and which permit allocation of these expenditures to individual dwelling units in the manner prescribed in paragraph (d) of this section.

(b) *Minimum amount.* (1) Rehabilitation expenditures paid or incurred by the taxpayer in any taxable year with respect to any dwelling unit may be taken into account only if the sum of (i) such expenditures, and either (ii) the rehabilitation expenditures paid or incurred by the taxpayer with respect to such dwelling unit in the immediately preceding taxable year, or

(iii) the rehabilitation expenditures paid or incurred by the taxpayer with respect to such dwelling unit in the immediately succeeding taxable year, exceeds $3,000. Thus, with respect to any dwelling unit the taxpayer must pay or incur rehabilitation expenditures of more than $3,000 over a period of 2 consecutive taxable years. See paragraph (e) of this section for special rule where no taxable year of the taxpayer includes the date on which the expenditures were paid or incurred.

(2) The principles of this paragraph may be illustrated by the following examples:

Example (1). A, a calendar-year taxpayer, spends $7,000 in 1970 to rehabilitate two dwelling units, of which $5,000 is attributable to unit 1 and$2,000 to unit 2. The expenditures qualify as rehabilitation expenditures under § 1.167(k)-(3). The property attributable to ther $5,000 spent on unit 1 would qualify for the election under section 167)k). The property attributable to ther $2,000 spent on unit 2 may qualify only if an amount in excess of $1,000 is expended solely on unit 2 in either 1969 or 1971.

Example (2). The facts are the same as in example (1) except that in 1972 A spends $4,000 to further rehabilitate units 1 and 2. The $4,000 is allocated to the two units equally and qualifies as rehabilitation expenditures under § 1.167(k)-(3). In the absence of any expenditures in 1971 or 1973, none of the property attributable to the expenditures in 1972 would qualify for an election under section 167(k).

(c) *Maximum amount.* (1) In general, the maximum amount of rehabilitation expenditures paid or incurred by the taxpayer with respect to any dwelling unit which may be taken into account under section 167(k) is $20,000. However, in the case of rehabilitation expenditures incurred before January 1, 1976, the amount of such expenditures paid or incurred by the taxpayer with respect to any dwelling unit which may be taken into account under section 167(k) is limited to $15,000. The rules in § 1.167(k)-1(a)(2) shall apply in determining whether an expenditure is incurred before January 1, 1976. Property attributable to amounts in excess of $20,000 (or, if applicable, $15,000) may qualify for the reasonable allowance provided by section 167(a). All amounts with respect to which a proper election is filed will be taken into account in applying the limitations of this paragraph, including rehabilitation expenditures treated as paid or incurred by the taxpayer by reason of § 1.167(k)-1(b) and rehabilitation expenditures covered by an election revoked or considered revoked under § 1.167(k)-4(d).

(2) This paragraph may be illustrated by the following examples:

Example (1). B, a calendar-year taxpayer, spends the following amounts (per dwelling unit) in 4 consecutive taxable years beginning in 1970: $500, $2,000, $5,000, and $9,000. The expenditures qualify as rehabilitation expenditures under § 1.167(k)-3. All of the property attributable to the expenditures in 1971 and 1972 qualifies for an election under section 167(k). If the taxpayer makes an election for such years, property attributable to only $8,000 of the expenditures for 1973 qualifies for the election since the total qualified amount may not exceed $15,000. The $500 expenditure in 1970 is not taken into account.

Example (2). X, a calendar year taxpayer on the cash receipts and disbursements method of accounting, spends a total of $22,000 for rehabilitation of one dwelling unit in an existing building held for low-income rental housing. X would be considered, under the accrual method of accounting, to have incurred $19,000 of the expenditures in 1975 and $3,000 in 1976. The expenditures qualify as rehabilitation expenditures under § 1.167(k)-3. Because of the $15,000 limitiation with respect to rehibilitation expenditures incurred before January 1, 1976, property attributable to only $15,000 of the $19,000 of expenditures incurred in 1975 qualifies for an election under section 167(k). The $4,000 of expenditures incurred in 1975 with respect to which X cannot make a valid election is not taken into account in applying the $20,000 limitation. Therefore, property attributable to the entire $3,000 of expenditures incurred in 1976 qualifies for an election under section 167(k).

(d) *Allocation rules.* (1) Expenditures which are attributable to more than one dwelling unit shall be allocated among those individual dwelling units in the same ratio as the area of each such dwelling unit bears to the total area of all dwelling units to which the expenditures are attributable. Expenditures for related facilities attributable solely to dwelling units, such as parking facilities for tenant use, shall be allocated among the dwelling units to which they relate in the same manner. Expenditures attributable to commercial units, or to related facilities attributable solely to commercial units, shall not be allocated to dwelling units. Expenditures for related facilities attributable in part to dwelling units and in part to nondwelling units shall be allocated among the particular dwelling and nondwelling units to which they relate. Expenditures attributable to common areas such as stairways, halls, and entranceways shall be allocated among the particular dwelling and nondwelling units to which they relate. In any case where the taxpayer can demonstrate the actual amount of expenditures paid or incurred with respect to a particular dwelling unit, the allocation rules of this subparagraph shall not apply to such expenditures.

(2) The principles of this paragraph may be illustrated by the following examples:

Example (1). A taxpayer spends $60,000 to replace the roof of an existing structure and to install a new heating system. There are 25 dwelling units of varying size in the structure. Unit 1 contains 1,000 square feet and unit 2 contains 2,000 square feet. The entire building contains 36,000 square feet. the dwelling units occupy 25,000 square feet, a retail store occupies 5,000 square feet, and common areas occupy the remainder. Of the 6,000 square feet of common areas, 1,000 square feet (5,000/30,000×6,000) are allocated to the commercial store and 5,000 (25,00/30,000×6,000) to the dwelling units. Since five-sixths of the total floor space (30,000/36,000) is attributable to dwelling units, the dwelling units are allocated $50,000 (⅚×$60,000) and the commercial units $10,000 (⅙×$60,000). Thus, unit 1 is allocated $2,000 (1,000/25,000×$50,000) and unit 2 is allocated $4,000 (2,000/25,000×$50,000).

Example (2). The facts are the same as in example (1) except that the entire building is devoted to dwelling units. In this case the allocation may be made without regard to the common areas. Thus, unit 1 is allocated $2,000 (1,000/30,000×$60,000), and unit 2 is allocated $4,000 (2,000/30,000×$60,000), of the rehabilitation expenditures.

Example (3). A taxpayer who owns a three-story apartment building spends $1,000 to install new paneling, carpeting, and lighting in the hallway on a floor containing five dwelling units of equal size. Each dwelling unit is allocated $200 of the total expenditure. Since the expenditure is attributable only to the floor containing the five dwelling units, none of the expenditure is allocable to other areas of the building.

Example (4). A taxpayer spends $5,000 to install new fixtures and new window glass in a commercial store on the first floor of a five-story building. The other floors are occupied by dwelling units. None of the expenditure is allocable to the dwelling units.

Example (5). A owns a three-story apartment building and enters into a contract under which B agrees to paint 10 dwelling units of equal size in the building. The contract price is $5,000. Unless the taxpayer establishes the amount spent with respect to each unit, the expenditure will be allocated equally to each unit.

(e) *Special rule.* (1) Except as provided in paragraph (e)(2) of this section, for purposes of applying the limitations of this section, rehabilitation expenditures treated as having been paid or incurred by the taxpayer by reason of § 1.167(k)-1(b) shall be deemed to have been paid or incurred on the date on which such expenditure were actually paid or incurred (determined in accordance with the method of accounting used by the person that actually paid or incurred the expenditures). If no taxable year of the taxpayer includes such date, then the limitations of this section shall be applied by taking into account the period ending 24 full months after such date.

(2) In determining, for purposes of the $15,000 limitation described in the second sentence of paragraph (c)(1) of this section, whether a rehabilitation expenditure is incurred before January 1, 1976 a rehabilitation expenditure treated as having been paid or incurred by the taxpayer by reason of

§ 1.167(k)-1(b)(1) shall be deemed to have been incurred on the date the expenditure would be considered incurred under the accrual method of accounting by the person or persons who actually incurred the expenditure, regardless of the method of accounting used by that person or persons.

The principles of this paragraph may be illustrated by the following example:

Example. B, a calender-year taxpayer, uses the cash receipts and disbursements method of accounting. B spends $20,000 in 1969 and 1970 to rehabilitate a building containing four dwelling units. The expenditures are allocated to each dwelling unit equally. The $20,000 qualifies as rehabilitation expenditures under § 1.167(k)-3 and is paid in the form of progress payments on the following dates:

Aug. 20, 1969	$4,000
Mar. 1, 1970	5,000
May 1, 1970	7,000
Oct. 20, 1970	4,000

Taxpayer C purchases the building on November 10, 1970, and the property attributable to the expenditures in placed in service on December 1, 1970. Taxpayer C reports on the basis of a taxable year ending September 30 and uses the accrual method of accounting. For purposes of applying the minimum amount limitation of paragraph (b) of this section, the rehabilitation expenditures paid by B on August 20, 1969, are considered incurred in taxpayer C's taxable year ending September 30, 1969. The rehabilitation expenditures paid by B on March 1 and May 1, 1970 are considered incurred in taxpayer C's taxable year ending September 30, 1970. The expenditures paid by B on October 10, 1970, are considered incurred in taxpayer C's taxable year ending September 30, 1971. Thus, the property attributable to the expenditures in August 1979 would qualify for an election under section 167(k) since $16,000 or $4,000 per dwelling unit, was incurred within taxpayer C's two taxable years ending on September 30, 1976, and September 30, 1970. The property attibutable to the expenditures deemed incurred in C's taxable year ending September 30, 1971, would also qualify.

§ 1.167(k)-3 Definitions.

(a) *Rehabilitation expenditures*—(1) *In general.* The term "rehabilitation expenditures" means amounts chargeable to capital account for depreciable property with a useful life of 5 years or more, in connection with the rehabilitation of an existing building for low-income rental housing. The existing building need not have been used for residential purposes prior to the rehabilitation. Expenditures attributable to a dwelling unit shall not qualify as rehabilitation expenditures unless following the completion of rehabilitation the dwelling unit is held for occupancy on a rental basis by tenants meeting the requirements of paragraph (b) of this section. Expenditures for the purchase of land, or incurred to purchase the existing building or any interest in the building (such as a leasehold interest), do not qualify as rehabilitation expenditures. Expenditures attributable to a commercial unit, such as a grocery store, do not qualify as rehabilitation expenditures. An amount need not be actually spent on a dwelling unit or a building in order to qualify provided the expenditure is in connection with the rehabilitation of an existing building and not attributable to a commercial unit. For example, expenditures to pave a parking lot for use by the tenants could qualify. Such expenditures must meet the limitations of section 167(k)(2) and will be allocated in accordance with § 1.167(k)-2(d).

(2) *New construction distinguished.* Expenditures attributable to a building which are for new construction do not qualify as rehabilitation expenditures. Whether expenditures are attributable to the rehabilitation of an existing structure, or attributable to new construction, will be determined upon the basis of all the facts and circumstances. Expenditures will generally be considered attributable to rehabilitation if the foundation and outer walls of the existing building are retained. Where the internal structural framework of a building is replaced and one or more outer walls are also replaced, the expenditures will generally constitute new construction, even though the construction may be considered rehabilitation under local law. Other factors that may be relevant in this determination include: The amount paid to acquire the existing building; and the amount of material remaining from the existing building.

(3) *Enlargement of existing building.* The total area occupied by the dwelling units in a rehabilitated building may not exceed the total area of the existing building prior to rehabilitation, and any enlargement of this area for dwelling units will be considered new construction which will not qualify as rehabilitation. Expenditures which are attributable to the construction of a related facility, such as a garage, sidewalk, or parking lot, will not be considered the enlargement of a building for dwelling units, even if such facility is physically attached to the building.

(4) *Examples.* The principles of this paragraph may be illustrated by the following examples:

Example (1). The taxpayer owns a two-story apartment building with an empty attic, which he plans to rehabilitate. In addition to rehabilitating the existing units, he constructs two new apartments in the space formerly occupied by the attic. The expenditures may qualify as rehabilitation expenditures. However, if the taxpayer adds a third story to the building, the expenditures for the third story do not qualify as rehabilitation expenditures.

Example (2). The taxpayer owns an apartment building. In addition to rehabilitating the existing structure, the taxpayer adds a new wing to the building occupied by dwelling units. The expenditures attributable to the new wing do not qualify as rehabilitation expenditures.

Example (3). The taxpayer owns an apartment building. As part of the rehabilitation of the existing structure, the taxpayer constructs a garage for the use of tenants. The expenditures attributable to the garage may qualify as rehabilitation expenditures. If the garage is used by tenants of dwelling units and other persons, an allocation of expenditures will be made.

(b) *Low-income rental housing*—(1) *In general.* (i) The term "low-income rental housing" means any dwelling unit in a building which is held for occupancy by families and individuals of low or moderate income (as defined in subparagraph (2) of this paragraph. A dwelling unit held for occupancy by families and individuals of low or moderate income may qualify as low-income rental housing even though other dwelling units in the same building are held for occupancy by persons who are not of low or moderate income. On the other hand, a dwelling unit held for occupancy by persons who are not of low or moderate income does not qualify as low-income rental housing, even though other dwelling units in the same building are held for occupancy by families and individuals of low or moderate income. If a dwelling unit fails to qualify as low-income rental housing at any time during the 60-month election period, any election with respect to any property attributable to rehabilitation expenditures allocated to such unit shall be considered revoked by the taxpayer. (See § 1.167(k)-4(d) for revocation of election.)

(ii) If a dwelling unit is rented for one or more periods during the taxable year, beginning after the date the property attributable to rehabilitation expenditures allocated to such unit is placed in service, it shall be considered low-income rental housing only if it is occupied by families and individuals of low or moderate income (as defined in subparagraph (2) of this paragraph) during each such period.

(iii) If a dwelling unit is not rented for some period during the taxable year, beginning after the date the property attributable to rehabilitation expenditures allocated to such unit is placed in service, it shall be considered low-income rental housing only if at all times during such period the rental at which the unit is offered indicates that such unit is held for occupancy by families and individuals of low or moderate income (as defined in subparagraph (2) of this paragraph). Generally, if the rental at which the unit is offered does not exceed 30 percent of the low or moderate income level (determined under subparagraph (2) of this paragraph), for the number of persons occupying comparable units, the unit will be considered low-income rental housing.

(2) *Definition of low or moderate income.* The occupants of a dwelling unit are considered families and individuals of low or moderate income for purposes of section 167(k) only if their adjusted income (computed in the manner prescribed in paragraph (b)(3) of this section) does not exceed 80 percent of the median income for the area, as determined with adjustments for smaller and larger families by the Secretary of Housing and Urban Development for the purposes of applying section 8(f)(1) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f(f)(1)), except that if, for purposes of applying such section, the Secretary of Housing and Urban Development establishes an income ceiling higher or lower than 80 percent of the median for the area, the higher or lower income ceiling shall apply. Notwithstanding the preceding sentence, the occupants of a dwelling unit shall not be considered as individuals and families of low or moderate income if all the occupants are students (as defined in section 151(e)(4)), no one of whom is entitled to file a joint return under section 6013. All determinations under this subparagraph shall be made as of the first day of the certification year (as defined in paragraph (b)(3) of this section).

(3) *Adjusted income.* (i) The adjusted income of a family or individual is the anticipated total annual income of the family or individual for the certification year, determined in accordance with the criteria prescribed by the Secretary of Housing and Urban Development under section 8(f)(3) of the United States Housing Act of 1937, as amended (42 US.C. 1437f(f)(3)), for purposes of determining whether a family is a lower-income family within the meaning of section 8(f)(1) of the Act. The adjusted income of a family or individual shall be computed solely from the income certifications required by paragraph (b)(4) of this section and shall be computed with respect to the "certification year" of the person. Adjusted income is not affected by income earned or received during the certification year that is not included in the income certification. The "certification year" for any person is the 12-month period which begins on the later of (A) the date on which the property attributable to the expenditures allocated to the dwelling unit occupied by the person is placed in service (see §1.167(k)-1(b)(3)), or (B) the date on which the person first occupies the unit on a rental basis, or signs a lease with respect to the unit, whichever occurs first. Adjusted income must be determined with respect to the actual occupants of the dwelling unit. For purposes of the preceding sentence, if any income of a family member who is not living in the dwelling unit would be taken into account under the criteria prescribed by the Secretary of Housing and Urban Development referred to in the first sentence of this subparagraph, that person shall be considered to be an occupant of the dwelling unit. The term "family", for purposes of section 167(k), means two or more persons related by blood, marriage, or operation of law.

(ii) The principles of this subparagraph may be illustrated by the following example:

Example. Family X first signs a lease on a rehabilitated dwelling unit on January 1, 1977, which the family first occupies on January 25, 1977. All expenditures with respect to the rehabilitation of the dwelling unit were paid or incurred by the taxpayer after December 31, 1975.

The certification year for members of family X is the 12-month period beginning on January 1, 1977. All income earned by family X in 1976 is disregarded. Instead, the determination of adjusted income shall be made with respect to the total anticipated annual income of the family for the calendar year 1977, computed in accordance with the criteria prescribed by the Secretary of Housing and Urban Development referred to in the first sentence of this subparagraph.

(4) *Income certifications.* A taxpayer electing to compute depreciation under section 167(k) with respect to any property contained in a dwelling unit, shall secure an income certification from the tenant covering each person who proposes to live in such unit after the beginning of the certification year. If a dwelling unit is subleased during the taxable year and the taxpayer elects to compute depreciation under section 167(k) with respect to any property contained in such unit, the taxpayer shall secure an income certification from the subtenant covering each person who proposes to live in the dwelling unit after the beginning of the certification year. If the dwelling unit is rented to a new tenant or subtenant during the 60-month election period, the taxpayer shall secure an income certification from the new tenant (or subtenant) covering each person who proposes to live in the unit after the beginning of the certification year. The income certification shall contain a statement of the anticipated total annual income for the certification year of each person who proposes to live in the dwelling unit during the certification year, the number of minors who propose to live in the dwelling unit during the certification year, the anticipated total annual income of such minors, and a description of any payments expected to be received during the certification year which are not considered to be income, all determined in accordance with the criteria prescribed by the Secretary of Housing and Urban Development referred to in paragraph (b)(3) of this section. The income certification must be sworn to before an official authorized to administer oaths (such as a notary public) and shall be maintained by the taxpayer as part of his books and records.

(5) *Effective date.* Paragraph (b) (2), (3), and (4) of this section shall apply to property attributable to expenditures which are paid or incurred after December 31, 1975. (For purposes of applying this subparagraph, rehabilitation expenditures treated as having been paid or incurred by the taxpayer by reason of §1.167(k)-1(b) shall be deemed to have been paid or incurred on the date on which the expenditures were actually paid or incurred, determined in accordance with the method of accounting used by the person that actually paid or incurred the expenditures.) In the case of property attributable to expenditures paid or incurred before January 1, 1976, the rules in 26 CFR 1.167 (k)-3(b) (2), (3), and (4), revised as of April 1, 1977, shall continue to apply.

(6) *Examples.* The principles of this paragraph may be illustrated by the following examples:

Example (1). The median family income in a particular area for a family of four, as established for the purposes of applying section 8(f)(1) of the U.S. Housing Act of 1937, is $12,000. During 1976, the taxpayer spends in excess of $3,000 per unit in rehabilitating three two-bedroom dwelling units, X, Y, and Z. All the units are placed in service on January 1, 1977, and are advertised for rental at $200 per month. Unit X is rented at this price to tenant A and unit Y is rented to tenant B. A and B each is married and each has two children. At the time of the signing of the lease, tenant A certifies that the family's adjusted income for the certification year (the 12-month period beginning on the date the lease is signed), computed under paragraph (b)(3) of this section, is $9,000. Tenant B, at the time of signing the lease, certifies that the family's adjusted income is $10,000 for the certification year. Assuming that the Secretary of Housing and Urban Development has not established an income ceiling higher or lower than 80 percent of median for the area for purposes of applying section 8(f)(1) of the U.S. Housing Act of 1937, the low or moderate income level for the purpose of this paragraph is $9,600 (80 percent of the $12,000 median income for the area). Since tenant A's adjusted income of $9,000 does not exceed this amount, rehabilitation expenditures allocated to the dwelling unit rented to tenant A could qualify under section 167(k). However, the rehabilitation expenditures allocated to the dwelling unit rented to tenant B could not qualify, since tenant B's adjusted income ($10,000) is in excess of the low or moderate income level for the area.

Example 2. The facts are the same as in example (1). Eight months after signing the lease, tenant A receives a promotion that was not anticipated when the lease was signed. Because of the unanticipated promotion, tenant A's actual income for the certification year is $9,800, which is more than the income ceiling ($9,600). Even though A's adjusted income would not have qualified if

the promotion had been anticipated when the lease was signed, the original election with respect to property contained in unit X will remain valid as long as tenant A occupies the unit. Unit Z, even though vacant throughout 1977, will be considered low-income rental housing because the rental at which the unit is offered ($2,400 per year) does not exceed $2,800, i.e., 30 percent of $9,600, the low- or moderate-income level for a family of four.

(c) *Dwelling unit.*—(1) *In general.* The term "dwelling unit" means a house or apartment used to provide living accommodations in a building or structure. It is not required that the dwelling unit be occupied subject to a lease.

(2) *Exception.* The term "dwelling unit" does not include any unit in a hotel, motel, inn, or other establishment more than one-half of the dwelling units in which are used on a transient basis. A dwelling unit is used on a transient basis if, for more than one-half of the days in which the unit is occupied on a rental basis during the taxpayer's taxable year, it is occupied by a tenant or series of tenants each of whom occupies the unit for less than 30 days. If a dwelling unit is occupied subject to a sublease for any portion of the taxable year, the determination of whether the unit is occupied on a transient basis shall be made with respect to the sublessee who occupies the unit, not with respect to the lessee.

§ 1.167(k)-4 Time and manner of making election.

(a) *Manner of election.*—(1) *In general.* An election under section 167(k) shall be made by attaching a statement to the income tax return filed for the first taxable year in which the taxpayer computes the depreciation deduction using a 60-month useful life. An information statement shall be attached to the income tax return filed for each subsequent taxable year in which the taxpayer computes depreciation under section 167(k). The 60-month election period shall begin with the date the property is placed in service, unless the taxpayer adopts an averaging convention in accordance with § 1.167(a)-10(b) which permits the use of some other date. Except as provided in subparagraph (2) of this paragraph, no election may be made until all the conditions and limitations of §§ 1.167(k)-2 and 1.167(k)-3 are satisfied.

(2) *Special rule.* The rules contained in this subparagraph shall apply only if the taxpayer does not satisfy the $3,000 minimum amount limitation of section 167(k)(2)(B) in the taxable year in which property is placed in service and in the immediately preceding taxable year. The taxpayer may make an election under section 167(k) for the taxable year in which property is placed in service, by filing the election within the time and in the manner prescribed in this section and by enclosing a separate written statement disclosing an intent to fulfill the $3,000 minimum amount limitation in the succeeding taxable year. If the taxpayer does not make an election under the preceding sentence for the taxable year the property is placed in service, an amended return to make the election may be filed for such year, provided that such amended return is filed within the time and in the manner prescribed in paragraph (c)(2) of this section. The principles of this subparagraph may be illustrated by the following example:

Example. A, a calendar-year taxpayer, spends $2,000 per dwelling unit in 2 consecutive taxable years, beginning in 1970, and the expenditures qualify as rehabilitation expenditures under § 1.167(k)-3. An election under this subparagraph may be made with respect to the property placed in service in 1970, even though the income tax return for 1970 is due before any expenditures have been paid or incurred in 1971: *Provided,* That A files a statement of intent to spend more than $1,000 per dwelling unit in 1971. Alternatively, A may file an amended return for 1970.

(b) *Information required.*—(1) *Election year.* The election to compute depreciation under section 167(k) with respect to any property must contain the following information:

(i) Taxpayer's name, address, and identification number.

(ii) Description of property with respect to which an election is made, and the date such property was placed in service (see § 1.167(k)-1(b) (3)).

(iii) Location and description of building being rehabilitated.

(iv) Number of dwelling units in the structure, and the number of such units occupied on a transient basis (see § 1.167(k)-3(c)(2)).

(v) Date rehabilitation expenditures were incurred (see § 1.167(k)-1(a)(2)).

(vi) Statement that all income certifications required by § 1.167(k)-3(b)(4) have been obtained.

(vii) For each dwelling unit which the taxpayer seeks to qualify as low-income housing for purposes of the election under section 167(k):

(*a*) Rehabilitation expenditures allocated to such unit (see § 1.167(k)-2(d)),

(*b*) For each period of occupancy during the taxable year, the number of occupants, the maximum income level permissible under § 1.167(k)-3(b)(2) for that number of occupants, the adjusted income of the occupants of such unit (determined solely from the income certifications required by § 1.167(k)-3(b)(4)), the method by which such income was determined, and the rent charged for such unit, and

(*c*) For each period in which such unit is vacant during the taxable year, a description of each such unit (as to number of rooms), the low- or moderate-income level in that area for the number of persons occupying comparable units, and the rental at which each vacant unit is offered.

(viii) If allocation is required under § 1.167(k)-2(d), the area occupied by dwelling units and nondwelling units.

(ix) If applicable, statement of intent to fulfill $3,000 minimum amount limitation (see § 1.167(k)-4(a)(2)).

(x) If the taxpayer is treated as having paid or incurred expenditures by reason of § 1.167(k)-1(b), the amount of such expenditures, the date the expenditures were incurred, the date the property attributable to the expenditures was placed in service, the method of accounting used by the person that made the expenditures, and the purchase price for the property attributable to the expenditures.

(2) *Subsequent years.* For each taxable year in which depreciation is computed under section 167(k) after the taxable year of the election, the statement required by this section must state the rental charges for each occupied unit and the rental charge at which each vacant unit is offered. In addition, if any such unit is rented to a new tenant during the taxable year, such statement must also contain the following information:

(i) A statement that such tenant has signed an income certification (§ 1.167(k)-3(b)(4)), and

(ii) The number of occupants in the unit, the maximum income level permissible under § 1.167(k)-3(b)(2) for that number of occupants, and the total adjusted income of such occupants, determined solely from the income certifications required by § 1.167(k)-3(b)(4).

(c) *Time for filing election.*—(1) *General rule.* In general, the election to compute depreciation under section 167(k) with respect to any property attributable to rehabilitation expenditures must be filed no later than the time prescribed by law (including extensions thereof) for filing the taxpayer's return for the taxable year in which the property is placed in service, provided that the rehabilitation expenditures meet the requirements of §§ 1.167(k)-2 and 1.167(k)-3 in that year, taking into account expenditures of the preceding taxable year for purposes of the $3,000 minimum amount limitation. The statement required for subsequent years must be filed no later than the time prescribed by law (including extensions thereof) for filing the return for such subsequent years. However, if the taxpayer does not file a timely return for the year in which the property is placed in service, the election shall be filed at the time the taxpayer files his first return for such year. For information required in the election and subsequent years, see paragraph (b) of this sec-

tion. If the taxpayer fails to make an election within the time prescribed by this paragraph, no election may be made with respect to such property by the filing of an amended return or in any other manner.

(2) *Special rule.* If an election is filed with an amended return permitted by paragraph (a)(2) of this section it must be filed no later than time prescribed by law (including extensions thereof) for filing a return for the first taxable year following the year in which the property is placed in service. The principles of this subparagraph may be illustrated by the following example:

Example. A, a calendar-year taxpayer, spends the following amounts (per dwelling unit) in 4 consecutive taxable years beginning in 1970: $2,000, $3,000, $4,000, and $5,000. The expenditures qualify as rehabilitation expenditures under § 1.167(k)-3 and the property attributable to the expenditures in each of the 4 taxable years would qualify for an election under section 167(k). A does not file an election under section 167(k) for 1970 or 1971 and the property attributable to the rehabilitation expenditures for those years may qualify for depreciation allowable under section 167(a). A may make an election under section 167(k) for the property attributable to the expenditures made in 1972 and 1973.

(d) *Revocation of election.*—(1) *In general.* An election under section 167(k) may be revoked by the taxpayer at any time prior to the time prescribed by law (including extensions thereof) for filing a tax return for the last taxable year in which any portion of the 60-month election period falls. Such revocation shall be made by filing a statement in writing with the District Director or Director of the Internal Revenue Service center with which the election was filed. If an election is revoked under this paragraph, the revocation shall not affect taxable years for which a tax return was filed computing a depreciation deduction under section 167(k). The revocation shall be effective on the date specified by the taxpayer. Such revocation may apply to any property attributable to rehabilitation expenditures allocated to any dwelling unit in the building or structure or to all such property. An election revoked under this subparagraph may not be reinstated.

(2) *Failure to meet requirements of section 167(k).* An election under section 167(k) with respect to property attributable to a dwelling unit shall be considered revoked with respect to such property if at any time during the taxable year—

(i) Such unit is rented to (or held for occupancy by) a family or individual not meeting the definition of low or moderate income (see § 1.167(k)-3(b)(2));

(ii) More than one-half of the dwelling units in the building are rented on a transient basis (see § 1.167(k)-3(c)); or

(iii) Expenditures which are required in order to meet the $3,000 minimum amount limitation for the preceding taxable year are insufficient (see § 1.167(k)-2(b)).

The revocation shall be deemed to occur on the first day in which the dwelling unit does not meet the requirements of section 167(k) during the taxable year. Any revocation of an election under this subparagraph shall not affect prior taxable years for which a tax return computing depreciation under section 167(k) was filed if all the conditions of section 167(k) were met for those years. An election considered revoked under this subparagraph may not be reinstated.

(3) *Effect of revocation.* The taxpayer may not compute the depreciation deduction using the 60-month useful life permitted under section 167(k) for any portion of any taxable year beginning after the date on which a revocation is effective under this paragraph. The depreciation deduction allowed under section 167(k) for the taxable year in which a revocation is effective shall be the amount such deduction would have been for such year if no revocation had occurred, multiplied by a fraction consisting of: (i) the number of days in the taxable year prior to the date of the revocation, over (ii) the number of days of the 60-month election period which falls within such year. The taxpayer shall continue to use the straight line method of depreciation, but shall use the estimated remaining useful life and salvage value of the property (determined without regard to section 167(k)) as of the date such recovation is deemed to occur. If the taxpayer wishes to adopt another method of depreciation following a revocation of an election, such new method is a change in a method of accounting which requires the consent of the Secretary or his delegate under section 446(e). Generally, the straight line method of depreciation using the property's remaining useful life determined without regard to section 167(k) will be the only method of depreciation which will be accepted following a revocation.

(4) *Example.* The principles of this paragraph may be illustrated by the following example:

Example. Beginning after July 24, 1969, a calendar-year taxpayer spends $5,000 per dwelling unit to rehabilitate the three dwelling units in an apartment house. The property attributable to these expenditures is placed in service on January 1, 1970. The dwelling units qualify as low-income rental housing and the taxpayer elects to compute depreciation under section 167(k). The dwelling units continue to qualify as low-income rental housing throughtout 1970, 1971, and 1972. On March 15, 1973, the three units cease to qualify as low-income rental housing and the election under section 167(k) is considered revoked on that date. The amount of the depreciation deduction computed under section 167(k) for 1973 with respect to these three units is the amount such depreciation would have been absent a revocation, $3,000 ($\frac{1}{5} \times \$15,000$), multiplied by the number of days of the taxable year before the revocation, 73, over the number of days of the 60-month election period within the taxable year, 365. Thus, the depreciation deduction for 1973 under section 167(k) is $600 ($\frac{73}{365} \times \$3,000$). For the remainder of 1973, the taxpayer must compute depreciation under the straight line method, using the estimated useful life and the salvage value of the property on March 15, 1973. The adjusted basis of the property on March 15, 1973, is $5,400, the property's unadjusted basis ($15,000), minus the depreciation allowed under section 167(k) ($9,600). Assume that the property's estimated remaining useful life is 20 years and that the salvage value is $1,000. The depreciation deduction for the remainder of 1973 under section 167(a) is the amount the depreciation would have been for 1973 under the straight line method, $220 ($\frac{1}{20} \times \$4,400$), multiplied by the number of days following the revocation, 292, over the number of days of the taxable year, 365. Thus, the taxpayer would be allowed a deduction of $176 under section 167(a) for the period of 1973 following the revocation ($\frac{292}{365} \times \$220$). The depreciation allowed for 1973 with respect to the property is the sum of the depreciation computed under section 167(k) before the revocation ($600) plus the depreciation allowed under section 167(a) after the revocation ($176), or $776.

(e) *Effective date.* The provisions of section 167(k) apply to taxable years ending after July 24, 1969. A taxpayer will be permitted to make an election or revoke an election under section 167(k) on or before June 9, 1972. The election will be permitted under this paragraph for any taxable year ending after July 24, 1969, notwithstanding the fact that the period prescribed by paragraph (c) of this section for filing an election for such taxable year has expired. The provisions of paragraph (a)(1) of this section shall apply for purposes of determining the beginning of the 60-month election period. If the taxpayer is permitted to revoke an election with respect to any property within the 90-day period specified in this paragraph, the taxpayer may adopt any method of depreciation permitted under section 167 for such property, beginning with the date the property was placed in service, using the estimated useful life of the property on such date, determined without regard to section 167(k).

(f) *Extension of time for election.* In the case of property attributable to expenditures paid or incurred after December 31, 1975, a taxpayer will be permitted to make an election under section 167(k) (and file the statement required for subsequent taxable years by paragraph (b)(2) of this section) on or before (the 90th day after the date this notice of proposed rulemaking is adopted as a Treasury decision), not-

withstanding the fact that the period prescribed by paragraph (c) of this section for filing an election for the taxable year (or for filing the statement required for a subsequent year) has expired.

[FR Doc. 78-12410 Filed 5-5-78; 8:45 am]

[3810-70]

DEPARTMENT OF DEFENSE

Defense Investigative Service

[32 CFR Part 298a]

[Dis Reg 28-4]

PRIVACY ACT OF 1974

Proposed Amendment of Exemption Rule

AGENCY: Defense Investigative Service (DIS).

ACTION: Proposed amendment of exemption rule.

SUMMARY: The DIS is amending an existing exemption rule for a record system identified as DIS 5-01, entitled, "Investigative files", by deleting the exemption from the provisions of subsection (o) of the Privacy Act.

DATES: Any comments must be received on or before June 7, 1978.

ADDRESS: Send comments to the Office of the Assistant for Information (D0020), Defense Investigative Service, 1000 Independence Ave SW., Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT:

Lt. Col. Dale L. Hartig, Assistant for Information, telephone, 202-693-1740.

SUPPLEMENTARY INFORMATION: On September 28, 1977 at 42 FR 51477 the DIS republished the procedural and exemption rules as required by the Privacy Act of 1974, Pub. L. 93-579 (5 U.S.C. 552a). DIS is proposing to amend an existing exemption rule identified in the summary above and located at 42 FR 51481 of the rules by deleting the exemption from the provisions of Subsection (o) of the Act. The record system notice was published on September 28, 1977 at 42 FR 51432. Therefore, it is proposed that § 298a.14, entitled "Exemptions", be amended as set forth below.

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

MAY 3, 1978.

§ 298a.14 Exemptions.

* * * * *

(c) *Investigative files.—DIS 5-01.*

(1) Exemption. 5 U.S.C. 552a(c) (3) and (4); (d); (e)(1), (2), (3), (5) and (8); and (g);

(2) Authority. 5 U.S.C. 552a(j)(2);

(3) Reasons. Records maintained by, or at the direction of the DIS Special Cases Division include criminal investigations for which DIS has primary responsibility and certain reports and reciprocal investigations, as well as security or counterintelligence information, which may be used in criminal prosecution. The withholding of this information will be to the extent necessary to allow the DIS Special Cases Division, a criminal law enforcement component, to conduct effective investigations into alleged unlawful activity, or crime conducive situations, without jeopardizing such investigations. Knowledge of the investigations of the Special Cases Division would enable subjects or suspects to take actions to prevent detection of criminal activities, fabricate evidence, influence witnesses improperly, conceal or destroy evidence, or to escape prosecution. It sould also lead to intimidation of, or harm to, sources, informants, witnesses and their families. Information from this system will be withheld only to the extent that its release would interfere with such investigations.

* * * * *

[FR Doc. 78-12430 Filed 5-5-78; 8:45 am]

[7710-12]

POSTAL SERVICE

[39 CFR Part 111]

SECOND-CLASS BULK MAILINGS

Lower Per Piece Rate for Regular Rate and Science of Agriculture Publications

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: On July 13, 1977, the Postal Service filed with the Postal Rate Commission proposals for changes in postage rates and fees. The specific rates and fees proposed are set forth at 42 FR 37,332 et seq. as amended at 42 FR 63,240-63,242 (1977), 42 FR 63,830 (1977). One of these proposals would provide two-tier per piece charges for second-class regular-rate and science of agriculture publications.

Under the proposal, publications mailed at regular or science of agriculture rates would be eligible for the lower per piece charges if they are properly prepared in 5-digit ZIP Code direct sacks.

Before this proposal can be placed into effect, it must be recommended by the Postal Rate Commission to the Governors of the Postal Service and be approved by the Governors. Under the provisions of 39 U.S.C. 3624, the Postal Rate Commission is to issue its recommended decision on the Postal Service's proposal on or before May 13, 1978.

The purpose of this rulemaking is to set forth and solicit comments on proposed rules and regulations that would apply if the two-tier per piece charges are recommended by the Postal Rate Commission and the recommendation is approved by the Governors of the Postal Service. the Postal Service will then be able to place new second-class rates, including the two-tier per piece charges, into effect in a timely way.

DATE: Comments must be received on or before May 20, 1978.

ADDRESS: Written comments should be directed to the Director, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service, Room 1610, 475 L'Enfant Plaza SW., Washington, D.C. 20260.

Copies of all written comments received will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in the Office of Mail Classification, Rates and Classification Department, Room 1610, 475 L'Enfant Plaza SW., Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT:

Mr. Ashley Lyons, 202-245-4749.

SUPPLEMENTAL INFORMATION: In order to carry out the purposes described above, the Postal Service would add to the Postal Service Manual a new 125.329, set forth below.

Although exempt under 39 U.S.C. 410(a) from the requirements of the Administrative Procedure Act, 5 U.S.C. 553 (b), (c), regarding proposed rulemaking, the Postal Service invites public comment on the following proposed revision of the Potal Service Manual:

PART 125—SECOND-CLASS BULK MAILINGS

In Part 125 of the Postal Service Manual add new .329 reading as follows:

125.3 Mailing

* * * * *

.32 Preparation by the Mailer of Copies in Packages and Sacks

* * * * *

.329 Mailings at 5-Digit Direct Presort Rates

To qualify for the lower per piece rate for regular rate and science of agriculture publications presented in 5-digit ZIP Code direct sacks, the following requirements must be met:

a. The publications must be for delivery to an address outside of the county of original entry;

b. The publications must be presented in:

(1) 5-digit ZIP Code sacks or

(2) 5-digit ZIP Code bundles in lieu of sacks if authorized in accordance with 125.328.

Each 5-digit sack (or 5-digit bundle in lieu of a sack) must contain a minimum of 20 pounds of mail or sufficient pieces to fill one-third of a sack. For the purposes of this requirement, 1,000 cubic inches of mail is considered sufficient to fill one-third of a No. 2 postal sack.

c. One sack to a 5-digit ZIP Code which is less than one third full or contains less than 20 pounds may qualify for this lower piece rate provided it is part of a mailing which includes other substantially full sacks to the same destination. This is to allow for the "overflow" to that destination which cannot be practically put with previously sacked mail to that destination.

d. Mailers must be prepared to document or otherwise confirm the number of pieces mailed and paid at the lower per piece rate. This may be done in any of the following manners:

(1) By separating the 5-digit ZIP Code direct sacks from the rest of the mailing when it is presented for mailing, or

(2) By attaching to the mailing statement a listing of the number of copies (and pieces) in each 5-digit ZIP Code direct sack for which the lower per piece charge is being paid, or

(3) By maintaining records for each mailing which will confirm the number of pieces in 5-digit ZIP Code direct sacks. The records must document the number of copies (and pieces) to each 5-digit ZIP Code destination for each edition of an issue entered at each post office for which 5-digit ZIP Code sacks are made up. A printout must be presented prior to the first mailing made under this arrangement, but not prior to August 1, 1978. These records must be retained for at least two months from the date of mailing. The mailer must provide a copy of the record for a particular mailing, or portions of it, within thirty days of a request by the postmaster of the office of entry. Postmasters shall advise the Region's Revenue Protection Program Manager of all publications being mailed under this arrangement. Acceptance Units will maintain a listing of publications authorized to mail under this agreement.

An appropriate amendment to 39 C.F.R. 111.3 to reflect these changes will be published if the proposal is adopted.

(39 U.S.C. 401(2))

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc. 78-12567 Filed 5-4-78; 2:32 pm]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 1, 81 and 87]

[FCC 78-268; SS Docket No. 78-137]

NEW PUBLIC COAST STATIONS, AERONAUTICAL ADVISORY STATIONS AND RADIONAVIGATION LAND STATIONS IN THE AVIATION SERVICES

Requiring Notification Upon Commencement of Service

AGENCY: Federal Communications Commission.

ACTION: Proposed Rulemaking.

SUMMARY: This document proposes amendments to certain of the Commission's rules to require notification upon commencement of service of new public coast stations, aeronautical advisory stations and radionavigation land stations, in the Aviation Services. This has been a routine condition of grant for public coast stations. This rulemaking will incorporate this condition of grant into the Commission's rules and will extend it to aeronautical advisory stations and radionavigation land stations in the Aviation Services.

DATES: Comments must be received on or before June 5, 1978 and reply comments must be received on or before June 15, 1978.

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

FOR FURTHER INFORMATION CONTACT:

John C. K. Hays, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

Adopted: April 20, 1978.

Released: May 3, 1978.

In the matter of amendment of Parts 1, 81 and 87 of the Commission's rules to require notification upon commencement of service of new public coast stations, aeronautical advisory stations and radionavigation land stations in the Aviation Services.

1. Notice of Proposed Rulemaking in the above-entitled matter is hereby given.

2. The Commission is proposing to amend its rules to require the licensees of new public coast stations, aeronautical advisory stations and radionavigation land stations in the Aviation Services to notify the Commission of the Commencement of station operations. Each of these types of stations provide important services to the public, and their frequencies, locations and hours of service are listed in various Government and non-Government publications. Under Commission rules only one station is permitted to operate in the area defined for that type of station, and operations must commence within eight months of the initial grant of the station license. If a station does not commence operations within this time period, the station license becomes invalid and must be returned to the Commission for cancellation. A new applicant then may file for a station license to serve that area.

3. To properly administer these rules and to provide accurate information concerning station operations, it is necessary that the Commission be promptly informed by the licensee of the commencement of station operations. Such requirement for notification by the licensee is presently a condition of grant placed on all public coast stations licensees and has not appeared to result in any substantial burden to the licensees. This proposed rulemaking would place this requirement in the rules and would extend it to aeronautical advisory stations and radionavigation land stations in the Aviation Services because of their public service use. Under the proposal, if the licensee fails to notify the Commission within 8 months of commencement of station operation, it would be conclusively presumed that the station is not in operation and the license would become invalid unless the licensee could show "good cause" why notification was not made. A statement of "good cause" would not be sufficient if it merely rested on the actions of the licensee or those associated with him. To come within "good cause", the failure to file must rest with some third party not within control of the licensee.

4. In addition to requiring notification by the licensee, this proposal would clarify the rules by amending Part 87 to reflect the requirement presently set forth in Section 1.932 of the Commission's rules that an authorized station, other than an operational fixed station operating on frequencies above 952 MHz, must be placed in operation within eight months from the date of grant or the authorization becomes invalid and must be returned to the Commission for cancellation.

5. The proposed amendments to the rules as set forth in the Appendix are issued pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

6. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's rules, interested persons may file comments on or before June 5, 1978, and reply comments on or before June 15, 1978. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this

proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

7. In accordance with the provisions of Section 1.419 of the Commission's rules, an original and 5 copies of all statements, briefs or comments filed shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

APPENDIX

Parts 1, 81 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURES

Section 1.932 is amended to read as follows:

§ 1.932 Time in which station must be placed in operation.

(a) For operational-fixed stations authorized to operate on frequencies above 952 MHz, the authorized station must be placed in operation within twelve months from the date of grant or the authorization shall be invalid and must be returned to the Commission for cancellation. For all other stations, the authorized station must be placed in operation within eight months from the date of grant or the authorization shall be invalid and must be returned to the Commission for cancellation.

(b) The licensee of a new public coast station, a new aeronautical advisory station or a new radionavigation land station in the Aviation Services shall notify the Commission in writing when the station is placed in operation. If the licensee fails to notify this Commission within eight months from the date of grant that the station has been placed in operation, it shall be conclusively presumed the station is not in operation and, thus, the license becomes invalid by operation of paragraph (a) of this section, unless the licensee shows good cause why notification was not made.

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA/PUBLIC FIXED STATIONS

Section 81.61 is amended to read as follows:

§ 81.61 Time in which station must be placed in operation.

(a) In those cases in which a license is issued initially in lieu of a construction permit, if the station authorized is not placed in operation within eight months from the date of the grant, the authorization shall be invalid and must be returned to the Commission for cancellation.

(b) The licensee of a new public coast station shall notify the Commission in writing when the station is placed in operation. If the licensee fails to notify this Commission within eight months from the date of grant that the station has been placed in operation, it shall be conclusively presumed the station is not in operation and, thus, the license becomes invalid by operation of paragraph (a) of this section, unless the licensee shows good cause why notification was not made.

PART 87—AVIATION SERVICES

A new § 87.58 is added to read as follows:

§ 87.58 Time in which station must be placed in operation.

(a) In those cases in which a license is issued initially in lieu of a construction permit, if the station authorized is not placed in operation within eight months from the date of the grant, the authorization shall be invalid and must be returned to the Commission for cancellation.

(b) The licensee of a new aeronautical advisory station or a new radionavigation land station shall notify the Commission in writing when the station is placed in operation. If the licensee fails to notify this Commission within eight months from the date of grant that the station has been placed in operation, it shall be conclusively presumed the station is not in operation and, thus, the license becomes invalid by operation of paragraph (a) of this section, unless the licensee shows good cause why notification was not made.

[FR Doc.78-12454 Filed 5-5-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[BC Docket No. 78-141; RM-3062]

FM BROADCAST STATIONS IN MARTIN AND NEON, KY.

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Action taken herein proposes the deletion of a Class A FM channel from Neon, Ky., and its assignment to Martin, Ky. Petitioner, Guaranty Broadcasting Co., states that since no interest has been shown in operating an FM station in Neon, the channel should be assigned to Martin where the proposed station could provided a first local aural broadcast service to that community.

DATES: Comments must be filed on or before June 20, 1978. Reply comments must be filed on or before July 10, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Adopted: April 21, 1978.

Released: May 2, 1978.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Martin and Neon, Ky.) BC Docket No. 78-141, RM-3062.

1. The Commission has before it for consideration a petition for rulemaking[1] filed February 6, 1978, by Guaranty Broadcasting Co. ("petitioner"), which requests the deletion of FM Channel 261A from Neon, Ky., to permit its assignment to Martin, Ky. Petitioner states that Channel 261A was assigned to Neon over ten years ago and that no application has been filed for its use. Petitioner asserts that Channel 261A could be assigned to Martin in conformity with the minimum distance separation requirements without affecting any presently assigned channel other than the deletion of Channel 261A from Neon. There is no other channel which could be assigned without deleting an existing assignment. Martin has no local broadcast service.

2. Martin, in eastern Kentucky, is a community of 786 persons in Floyd County (pop. 35,880),[2], and is located approximately 64 kilometers (40 miles) west of the intersection of Virginia and West Virginia state lines and 13 kilometers (8 miles) south of Prestonburg, Ky. Petitioner asserts that Martin, whose population has increased to an estimated 1200 in 1977, is primarily a mining community. It states that, with the county relying more heavily on coal as an energy source, the Floyd County population can be expected to increase, and the opportunities for new businesses and existing concerns will continue to grow. Petitioner notes that over a dozen mining companies form the base of the Martin area economic structure. It offers a description of Martin's form of government, the local geography, school system, civic, religious and rec-

[1]Public Notice of the petition was given on March 7, 1978, Report No. 1106.

[2]Population figures are taken from the 1970 U.S. Census, unless otherwise indicated.

reational activities in an effort to show the need for the assignment.

3. Petitioner asserts that, since no interest has been shown in operating an FM station at Neon, the channel should be assigned to Martin where a need exists and a demand for its use has been expressed. Petitioner states that, if the channel is assigned to Martin, it will promptly file an application for a construction permit.

4. Although the FM channel was initially assigned in 1963, the channel has lain fallow all these years. Since an interest has been shown for its use elsewhere, it would be in the public interest to examine this possibility.

5. In view of the foregoing, and pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, it is proposed to amend the FM Table of Assignments (§ 73.202(b)) to read as follows:

City	Channel No. Present	Proposed
Martin, Ky	—	261A
Neon, Ky	261A	—

6. Authority to institute rulemaking proceedings; showings required; cutoff procedures; and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

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

7. Interested parties may file comments on or before June 20, 1978, and reply comments on or before July 10, 1978.

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

APPENDIX

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

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

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

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

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

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

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

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

[FR Doc. 78-12399 Filed 5-5-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[BC Docket No. 78-143; RM-3020]

FM BROADCAST STATION IN EL DORADO, ARK.

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Action taken herein proposes the assignment of a third Class A FM channel to El Dorado, Ark., in response to a petition filed by Inspiration Radio Service. Petitioner claims the proposed station would provide El Dorado with a much-needed additional broadcast service.

DATES: Comments must be received on or before June 23, 1978. Reply comments must be received on or before July 13, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Adopted: April 24, 1978.

Released: May 3, 1978.

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (El Dorado, Ark., BC Docket No. 78-143, RM-3020.

1. *Petitioner, Proposal, Comments.* (a) Petition for rulemaking,[1] filed December 5, 1977, by Inspirational Radio Service ("petitoner"), proposing the assignment of Channel 240A as a third Class A FM channel to El Dorado, Ark. An opposition to the petition was filed by Noalmark Broadcasting Corp., licensee of AM Station KELD and Station KEZU-FM (Channel 276A). A response was filed by petitioner.

(b) The channel may be assigned without affecting any existing FM assignments.

(c) Petitioner states that if the channel is assigned, it will apply for a construction permit to build a station.

2. *Demographic data*—(a) *Location.* El Dorado, seat of Union County, is located in south central Arkansas, approximately 176 kilometers (110 miles) south of Little Rock, Ark., and 430 kilometers (270 miles) northwest of New Orleans.

(b) *Population.* El Dorado—25,283; Union County—45,428.[2]

(c) *Local aural service.* Daytime-only AM Station KDMS, full-time AM Station KELD, FM Stations KRIL (Channel 257A) and KEZU (Channel 276A).

3. *Economic considerations.* Petitioner argues that El Dorado and Union County are beginning to experience development and have a need for an additional broadcast service. It asserts that the proposed station could take an active part in the economic development of the area by providing a competitive outlet for advertising. Petitioner states that air time would be made available for farm programs, a daily program in cooperation with the state employment board listing job opportunities, and indicates that time would be donated to civic, church, fraternal, governmental, developmental, and other public service groups to assist in disseminating vital information on public issues. Petitioner, in support of its petition, has submitted information with respect to education, government, churches, medical and recreational facilities, and work force. It asserts that the proposed channel would provide El Dorado with a much needed additional FM station.

[1] Public Notice of the petition was given on December 19, 1977, Report No. 1094.

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

4. In opposition, Noalmark Broadcasting Corporation ("Noalmark") contends that the two AM stations and two FM stations serving El Dorado assure diversity of programming and adequate coverage. It asserts that other radio signals from communities within the states of Arkansas and Louisiana reach the El Dorado community and provide additional radio diversity to the residents. Noalmark argues that the proposed assignment would be detrimental to the financial viability of the existing stations since El Dorado must be considered a small market radio community. It contends that the result could be a lowering of the quality of broadcasting in El Dorado. Noalmark states that Channel 240A is assigned to Lake Village, Ark., and believes it is in the public interest to have it retained in that community.

5. In response, petitioner asserts that Noalmark is in error when it contends that the proposal involves the reassignment of Channel 240A from Lake Village, Ark. Petitioner states that its proposal is a drop-in and would have no effect on any other assignment in the FM Table. It disagrees with Noalmark that all community needs are being served by the existing stations because other formats such as beautiful music and ethnic, are available locally on a full-time basis. Petitioner claims that even though their signals may be heard in the city, other stations, located outside the El Dorado area, have not proposed a service to the city. It contends that Noalmark's statement as to economic harm and reduced level of broadcast service, that could result if another station were to be authorized, is unsupported.

6. *Preclusion studies.* Preclusion would occur on Channels 240A and 241 as a result of the proposed assignment. Five communities[3] with populations over 1,000 are located in the precluded areas. Of the five communities Hope, Ark., has an AM and FM station, and Ashdown, La., has an FM station. Waldo and Smackover, Ark., and Bernice, La., have neither FM assignments nor AM stations. Petitioner should indicate whether there are any channels available for assignment to Waldo, Smackover, and Bernice.

7. *Additional considerations.* The request for a third FM assignment to a community of 25,283 persons exceeds the FM population guidelines which call for one or two assignments for a city of this size. However, the proposal is being advanced for the purpose of determining whether such an assignment is warranted and whether the public interest would be served by making the additional assignment. In this connection, we note that the issue of economic impact on existing stations is not one dealt with in a rulemaking context. Rather, it can better be dealt with in connection with any application that is filed. As part of its effort to document the need for a third assignment, petitioner should submit in its comments a *Roanoke Rapids,* 9 FCC 2d 672 (1967), study showing the area and number of people who would receive a first and second FM service. In addition, petitioner should show the extent of nighttime service provided by AM stations in the context of first and second aural service. *Anamosa-Iowa City, Iowa,* 46 FCC 2d 520 (1974). Petitioner is invited to offer any other information it believes would indicate the need for the assignment.

8. Comments are invited on the following proposal to amend the FM Table of Assignments with regard to the community of El Dorado, Ark., as follows:

	Channel No.	
City	Present	Proposed
El Dorado, Ark.	275A, 276A	240A, 257A, 276A

9. The Commission's authority to institute rulemaking proceedings; showings required; cut-off procedures used; and filing requirements are contained in the attached Appendix and are incorporated herein.

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

10. Interested parties may file comments on or before June 23, 1978, and reply comments on or before July 13, 1978.

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

APPENDIX

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

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

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

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

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

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

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

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

[FR Doc. 78-12400 Filed 5-5-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[BC Docket No. 78-142; RM-2977]

TELEVISION BROADCAST STATION IN LEWISTON, IDAHO

Proposed Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Action herein proposes the assignment of television Channel 5 for noncommercial educational use in Lewiston, Idaho. Petitioner, The State Board of Education and Board of Regents of the University of Idaho, states it plans to construct a 100 watt television translator station on Channel 5 so it could rebroadcast programs from Channel 12 in Moscow, Idaho, to serve Lewiston, Idaho.

[3] Arkansas: Waldo (pop. 1,658); Smackover (2,058); Hope (8,810); Louisiana: Bernice (1,794); Ashdown (3,522).

DATES: Comments must be received on or before June 20, 1978. Reply comments must be received on or before July 10, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Adopted: April 21, 1978.

Released: May 3, 1978.

In the matter of Amendment of § 73.606(b), *Table of Assignments*, Television Broadcast Stations. (Lewiston, Idaho), BC Docket No. 78-142, RM-2977.

1. The Commission has before it a petition[1] filed by the State Board of Education and Board of Regents of the University of Idaho ("petitioner"), licensee of seven noncommercial educational broadcast stations in Idaho,[2] proposing the assignment of Channel 5 at Lewiston, Idaho, for noncommercial educational television use. The channel could be assigned in conformity with the minimum distance separation requirements. Oppositions were filed by Clearwater Cable T.V. Corp. ("Clearwater")[3] and Teleprompter Corp. ("Teleprompter").[4] Replies were filed by petitioner and KHQ, Inc., licensee of television Station KHQ-TV, Channel 6, Spokane, Wash.

2. Lewiston (pop. 26,068), seat of Nez Perce County (pop. 30,376), is located in far western Idaho, adjacent to the Washington border and approximately 40 kilometers (25 miles) north of the Oregon border. Lewiston is currently assigned television Channel 3 which is occupied by Station KLEW-TV.

3. Petitioner asserts that if Channel 5 is assigned, it plans to construct a 100 watt television translataer station, which would rebroadcast Station KUID-TV, operating on Channel 12 in Moscow, Idaho, to serve Lewiston. Petitioner contends that because of intervening terrain obstacles, only a few households in the elevated residential area of Lewiston can receive a signal off-the-air from Station KUID-TV. It claims that since low income residents tend to live in the part of Lewiston which does not receive KUID-TV's signal adequately, it is significantly handicapped in reaching a part of the population who can most benefit from its programs. Petitioner claims that a high-power VHF-TV translator station is capable of reaching outlying areas around Lewiston which cannot be served by a 100 watt UHF-TV translater because of variable terrain. It asserts that since the local translator association seeks out donations from residents who have installed a UHF receiving antenna, installation of another UHF translater station in the community would unduly complicate fund raising activities for the translator association and would not be in the public interest. Petitioner also notes that about one-quarter of Lewiston television household do not subscribe to the local cable TV service offered by Teleprompter Corp.

4. In opposing comments, Clearwater states that, while it has no objection to a 100-watt translator station on Channel 5 in Lewiston, it objects to the assignment of the proposed channel for television broadcast operation in Lewiston. It notes that translators operate throughout the north central Idaho area, and one of these is Station K05BS in Orofino, Idaho, which is located 97 kilometers (60 miles) east of Lewiston. Petitioner claims that a full powered television station would cause interference to translator Station K05BS. It contends further that, since television stations on Channels 3, 10, and 12 provide Grade B service to Orofino, it is not likely that Station K05BS would seek to change to one of these channels, and since other local translators are operating on Channels 7, 9, and 12, Station K05BS would not seek to operate on these channels or a channel adjacent to them. It claims that the signals of television stations operating on Channels 2, 4, and 6 (all in Spokane, Washington) are received off the air by Clearwater and distributed to its subscribers. Therefore, translator operation on these channels in Orofino, it asserts, would run a serious risk of interfering with Clearwater's reception of the Spokane signals. Clearwater asserts that since petitioner has not unequivocally stated it will build a television station on Channel 5 if the channel is assigned, the proposal should be denied for lack of showing of need for assignment of a television channel. It further states that this does not preclude the Commission from considering an application by petition for a 100 watt translator on Channel 5 in Lewiston and an appropriate request for waiver to permit grant of such an application.

5. In opposition, Teleprompter contends that a 100 watt translator station operating in Lewiston on Channel 5 would cause severe cochannel interference, rendering the cable Channel 5 useless. Teleprompter claims it would be required to displace carriage of Station KLEW-TV (Lewiston) and disrupt the viewing pattern of its subscribers. It does not agree with petitioner's assumption that non-subscribers to Teleprompter's cable television system "are predominantly those who feel they cannot afford the cable subscription." Teleprompter believes that nonsubscribers are those who feel they receive off-air reception of television signals including the signal of KUID-TV. Teleprompter asserts that petitioner's assumption that installation of a UHF translator in Lewiston would unduly complicate fund raising activities for the translator association is unwarranted. It contends that petitioner has made no showing, beyond its own speculation, of the need for assignment of Channel 5 to Lewiston.

6. KHQ, Inc., licensee of television Station KHQ-TV, Spokane, Wash., in support of the opposition by Teleprompter, contends that the proposed assignment would not be in the public interest because it would be an inefficient use of valuable spectrum and would be likely to create interference to the only NBC network service available directly off-the-air in Lewiston. KHQ asserts that petitioner fails to demonstrate why a UHF translator could not provide additional service to Lewiston in order to fill in those areas of the KUID-TV city grade coverage now theoretically provided to this community, and that a UHF translator would not raise the potential of adjacent channel interference to the cable television system serving Lewiston nor to the direct off-the-air reception of KHQ-TV or the pick-up of KHQ-TV by translator K76AH. It, too, argues that KUID-TV has not provided support for its contention that authorization of another UHF translator would unduly complicate fund raising activities for the translator association.

7. In reply to these oppositions, petitioner asserts that the potential interference to Teleprompter's carriage of Lewiston's Channel 3 station is minimal in that the ERP of a 100 watt translator using a five-element yagi antenna would be over 15 dB below the ERP of Station KLEW-TV, and that although Station KLEW-TV on Channel 3 would have the same frequency relationship with KXLY-TV on Channel 4, Teleprompter claims interference would be caused by a Channel 5 station to the pick-up of Station KHQ on Channel 6. Petitioner argues that Teleprompter has the option of dropping carriage of a Spokane educational television station and moving Station KLEW-TV to that channel if any Channel 5 interference were to occur. It also asserts that it is logical to assume that people who wish to avoid payment to the translator association could say that the antennas were installed to receive petitioner's translator station. As to Clearwater's contention that the Channel 5 station would interfere with the reception of

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[1] Public Notice of the petition was given on October 17, 1977, Report No. 1083.

[2] KAID(TV) and KBSU-TV, Boise; KBGL-FM and KBGL-TV, Pocatello; and KUID-FM and KUID-TV and KUOI-FM, Moscow.

[3] Owner and operator of a cable television system in Orofino, Idaho.

[4] Operator of a cable system in Lewiston.

Channels 4 and 6 stations in Spokane, petitioner contends that, if Teleprompter can receive the Lewiston Channel 3 station and Channel 4 station, Clearwater should be able to receive a usable signal from the Channel 6 station even with full-power Channel 5 station located some 63 kilometers (39 miles) away.

8. To provide educational television service to an area located at the foot of a hill in Lewiston, petitioner is seeking an assignment of a VHF channel on which it intends to operate a 100 watt translator station. The proposed assignment meets the spacing requirements. The oppositions have raised a number of arguments, which without additional information, do not appear to have much merit. It would appear that the location of headend units for the cable systems in relation to the translator or the broadcast station would govern the question of interference to such service, not the mere existence of a certain relationship of channel assignments and usage. The cable systems appear to have a flexibility in their channel usage and thus should not be detrimentally affected by the requested assignment. Nevertheless, there is a question about the necessity of using a 100 watt VHF translator while the existing UHF translator stations are operating with 10 to 20 watt output powers to serve Lewiston. Petitioner should address this point.

9. The Commission believes that a sufficient public interest showing has been made to warrant consideration of petitioner's proposal. Thus, a rule making proceeding is being instituted to inquire into the instant proposal. The revision of the Television Table of Assignments § 73.606(b) of the rules) will be considered with respect to the city listed below:

	Channel No.	
City	Present	Proposed
Lewiston, Idaho	3-	3-, *5+

10. Since Lewiston is located within 420 kilometers (250 miles) of the United States-Canada border, the proposed assignment of Channel 5 to Lewiston, Idaho, requires coordination by the Canadian Government.

11. The Commission's authority to institute rule making proceedings; showings required; cut-off procedures; and filing requirements are contained in the attached appendix and are incorporated herein.

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

12. Interested parties may file comments on or before June 20, 1978, and reply comments or or before July 10, 1978.

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

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

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

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

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

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

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

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

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

[FR Doc. 78-12401 Filed 5-5-78; 8:45 am]

[6712-01]

[47 CFR Part 74]

[Docket No. 19918; RM-2235]

FM RADIO BROADCAST TRANSLATOR STATIONS

Order Extending Time For Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a proceeding concerning amendment of the rules pertaining to FM radio broadcast translator stations. Petitioner, National Radio Broadcasters Association, states that the additional time is needed to complete the extensive consultations which must be undertaken with its members before comments can be prepared.

DATES: Comments must be received on or before June 2, 1978, and reply comments on or before June 23, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Adopted: April 28, 1978.

Released: May 1, 1978.

In the matter of amendment of Part 74, Subpart L, of the Commission's rules Pertaining to FM Radio Broadcast Translator Stations, Docket No. 19918, RM-2235.

1. On March 22, 1978, the Commission adopted a *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 43 F.R. 14695, concerning the above-entitled proceeding. The present dates for filing comments and reply comments are May 5, and May 25, 1978 respectively.

2. On April 20, 1978, counsel for the National Radio Broadcasters Association filed a timely request seeking an extension of time for filing comments to and including June 2, 1978. Counsel states that because of the diversity of views of the Association's members in this proceeding it has become necessary to review carefully the various interests of the members in order to determine the precise position to be presented to the Commission. It asserts that since this requires extensive consultations to be undertaken, additional time its needed to complete the task of preparing comments.

3. We are of the view that the public interest would be served by this exten-

sion so that the National Radio Broadcasters Association may file any information which might be helpful to the Commission in reaching a decision in this proceeeding. Also, as a result of this decision, it is necessary to extend the reply comment date an equivalent amount of time.

4. *Accordingly, it is ordered,* That the dates for filing comments and reply comments in Docket 19918 are extended to and including June 2, and June 23, 1978, respectively.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

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

[FR Doc. 78-12398 Filed 5-5-78; 8:45 am]

[4910-06]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Chapter II]

[Docket No. RSSI-78-5; Notice No. 1]

GENERAL SAFETY INQUIRY

Initiation and Announcement of Hearings

AGENCY: Federal Railroad Administration, Department of Transportation.

ACTION: Notice of general railroad safety inquiry.

SUMMARY: The Federal Railroad Administration (FRA) is initiating a general railroad safety inquiry to obtain information from the public to assist in evaluating and improving the effectiveness of its safety regulatory program. A series of public hearings, each focused on a single regulatory topic, will be held throughout the remainder of 1978.

DATES: (1) The first 2-day public hearing will begin at 10 a.m. on June 14, 1978 (other hearings have been tentatively scheduled for July 12 and 13, August 2 and 3, October 11 and 12, and November 2 and 3). (2) Prepared statements should be submitted to the principal program person by June 7, 1978. (3) Persons desiring to participate in the hearing should notify the principal program person by June 7, 1978.

ADDRESS: Hearing location—Trans Point Building, Room 3201, 2100 Second Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Principal program person: Rolf Mowat-Larssen, Office of Safety (RRS-20), FRA, Washington, D.C. 20590, phone 202-426-0924.

Principal attorney: Edward F. Conway, Jr., Office of Chief Counsel (RCC-30), FRA, Washington, D.C. 20590, phone 202-426-8836.

SUPPLEMENTARY INFORMATION: Pursuant to § 211.61 of its rules of practice (41 FR 54181; 49 CFR 211.61), the Federal Railroad Administration (FRA) is initiating a general safety inquiry to examine in depth selected topics covered by its safety regulations. FRA will use the information it receives in this inquiry in assessing the effectiveness of its safety regulatory program. On the basis of this and other information, existing regulations may be expanded in scope, revised, or revoked to reflect changed conditions.

The scope of this inquiry will encompass three general areas: (1) Rolling equipment; (2) track and related structures, appliances, and devices; and (3) signal and communication systems.

The first area of consideration—rolling equipment—will consist of four topics: Locomotives, freight cars, safety appliances, and power brakes. Each of these topics will be considered in separate 2-day hearings during the next several months. The subject of the first hearing will be locomotives. This hearing will take place on June 14 and 15, 1978, in Washington, D.C.

Additional hearings have been tentatively scheduled to take place in Washington, D.C., on the following dates:

July 12 and 13—Freight cars and safety appliances.

August 2 and 3—Power brakes.

October 11 and 12—Track and related structures, appliances and devices.

November 2 and 3—Signal and communication systems.

Separate notices for each of these hearings will be published at a later date setting the time and place of the hearing.

The purpose of the first 2-day hearing scheduled for June 14 and 15, 1978, is to elicit information to assist FRA in critically reviewing its present safety regulatory program with respect to locomotives. Existing safety regulations for locomotives are contained in 49 CFR Part 230. Many of the requirements in Part 230 have been in effect with little or no change for more than 30 years and consequently, may be no longer necessary or may require revision to reflect changed conditions. Representatives of the railroad industry frequently have alleged that many of the requirements prescribed in safety regulations are based on "maintenance standards" or "recommended practices" rather than safety considerations. For example, the Association of American Railroads (AAR) recently petitioned the FRA to amend its locomotive inspection rules to make the present 30-day inspection requirement prescribed in 49 CFR 230.331, a quarterly inspection requirement (FRA rulemaking petition 78-1. On the other hand, some factors that play a vital safety role may not be covered by present regulations.

FRA is considering a major restructuring of its locomotive safety regulations. The restructuring would not be limited to eliminating or updating existing requirements that are obsolete or no longer necessary; it would also include the development of new requirements to meet the needs of the present railroad operating environment. Among the items to be addressed in this inquiry are the following:

1. How should safety requirements for the design, construction, inspection, maintenance, and operation of locomotives differ according to the type of service and operating environment? What factors should be considered in structuring these safety requirements (i.e., speed, mileage per year, train tonnage, length of train, train braking needs, dynamic response characteristics of locomotives, tractive effort, curvature and grades, and other operational factors)?

2. How should the inspection, maintenance, and replacement requirements for locomotive parts and components essential to safe operation take into account the quality and life expectancy of those parts and components?

3. What inspection procedures and intervals should be prescribed for the various types of service and operating environments? What should be the qualifications of persons performing the various types of locomotive safety inspections?

4. What do you recommend as a practical and enforceable Federal regulatory approach to assure locomotive safety? Explain.

5. In what areas do you believe further research and development is needed to improve the safety performance of locomotives?

FRA has requested that the Association of American Railroads, individual ralroads, the National Transportation Safety Board, locomotive manufacturers, railroad employee organizations, and other interested parties participate actively in this hearing by providing knowledgeable witnesses and pertinent technical, manufacturing, service, and cost data. FRA has further requested that these witnesses be prepared to present detailed information to justify their positions.

Prepared statements should be submitted by June 7, 1978, in triplicate to the Docket Clerk, Office of Chief Counsel (RCC-1), Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590.

Persons desiring to participate in this hearing should notify the principal program person by June 7, 1978, and indicate the amount of time they will need to present their views.

The first 2-day hearing will begin at 10 a.m. on Wednesday, June 14, 1978, in Room 3201, Trans Point Building, 2100 Second Street SW., Washington, D.C. 20590.

AUTHORITY: Sec. 208, Federal Railroad Safety Act of 1970 (45 U.S.C. 437), § 1.49(a) of the regulations of the Office of the Secretary, 49 CFR 1.49(n).

Issued in Washington, D.C., on May 2, 1978.

JOHN M. SULLIVAN,
Administrator.

[FR Doc. 78-12360 Filed 5-5-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-05]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

UNIFORM GRAIN STORAGE AGREEMENT AND UNIFORM RICE STORAGE AGREEMENT

Modified Offer Rate System for Storage and Handling

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to proclaim under the uniform grain storage agreement (UGSA) and the uniform rice storage agreement (URSA) that the offer rate system will be continued for the 1978-79 contract year starting July 1, 1978, certain modifications.

EFFECTIVE DATE: July 1, 1978.

ADDRESS: Inventory Management Division, ASCS-USDA, Room 5969-South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Tyrus Matsuoka (ASCS), 202-447-4068.

SUPPLEMENTARY INFORMATION: Uniform storage and handling rates for the UGSA and the URSA were in effect from 1940 and 1947, respectively through 1974. Under that system, CCC set the rates which were in effect for each contracting period. Uniform storage and handling rates were applied to all warehouses with grain storage contracts with CCC. Likewise, rice warehousemen had uniform rates that applied to the rice storage contracts. Under this system, CCC could withhold storage charges on grain or rice placed under loan and pay the warehouseman.

Beginning in 1975, an offer rate system was initiated whereby CCC accepted the storage and handling rates as offered by warehousemen. At the same time, CCC changed the loan procedure to provide that producers must prepay or arrange to pay the storage themselves and CCC would not make storage deductions on the loan and note agreement.

A notice that CCC was considering returning to a national uniform rate system for handling and storage of grain under the UGSA and rice under the URSA for the 1978-79 contract year beginning July 1, 1978, was published in the FEDERAL REGISTER on October 12, 1977 (42 FR 54955), in accordance with 5 U.S.C. 553.

A total of 143 comments were received, of which 42 favored a return to uniform rates, 92 opposed such a return; and 9 commented on other issues and were nonresponsive to the rate system issue. Several of the above pointed out: (1) That rates must adequately reflect increased elevator expense in order to insure proper performance by and services from the participating warehouses, and (2) the prepaid storage concept has caused concern among the producers.

In making the determination in this notice, full consideration was given to the principal concerns expressed by producers and producer groups as well as by the warehousing industry as they apply to the administration of the CCC storage programs.

Notice is hereby given that the offer rate system under the UGSA and URSA will be continued for the 1978/79 contract year starting July 1, 1978, with the following modifications:

(1) Storage and handling charges to accrue through the maturity date shall be deducted from grain loans, unless prepaid by the producer. Rice loans will continue to be made using procedures already in effect. If a grain producer is able to obtain a rate lower than the rate offered Commodity Credit Corporation (CCC), he can exercise his option to prepay the lower charges and can collect the full county loan rate (applicable to grains) from the county offices;

(2) Rates offered for CCC-owned and CCC-loan commodities will be the same, with an allowance for insurance on CCC-loan grain;

(3) Rates shall be subject to review and CCC reserves the right to reject and negotiate rates offered if they are deemed excessive. If rates are excessive and cannot be negotiated, CCC will notify the warehouseman that CCC will not store CCC-owned grain or rice in his facility and shall load out any CCC-owned grain or rice in store as soon as practicable. Warehouse shall be removed from the list of approved warehouses;

(4) All grain rates accepted will be open for public review in applicable ASCS State and county offices;

(5) CCC will accept downward adjustments in the grain and rice storage and handling rates once a year on a case-by-case basis;

(6) Warehousemen filing rates under the UGSA will submit the same storage and handling rates for wheat, barley, rye, and sorghum; but soybeans, corn, and oats will have separate rates, respectively. If an identity preserved storage rate is needed, it can be negotiated on an individual basis; and

(7) Under the URSA, storage and handling rates will continue to be submitted for identity preserved, modified commingled, and commingled storage and handling rates.

In addition, the following administrative changes will be applicable: (1) 30-day grace period at old load out rate from July 1-31, if a rate has not been agreed upon by July 1, and (2) if uninsured rate is the same or more than the insured rate, the warehouseman must carry full market value insurance on CCC-owned grain.

It is essential that a decision on 1978-79 storage policy be made as soon as possible to provide sufficient time for the warehouseman to determine their offer rates for the 1978-79 contract year. Accordingly, this notice is being issued at this time.

NOTE.—The Agricultural Stabilization and Conservation Service, to meet the requirements of the National Environmental Policy Act (Pub. L. 91-190, 42 U.S.C. 4321 et seq.), has developed an environmental assessment on the program and has determined that the proposed action would not constitute a major Federal action significantly affecting the quality of the human environment.

Signed at Washington, D.C., on May 2, 1978.

RAY FITZGERALD,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 78-12478 Filed 5-5-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket 32343]

DALLAS/FORT WORTH-PHILADELPHIA SERVICE INVESTIGATION

Notice of Prehearing Conference

A prehearing conference in this proceeding will be held on May 15, 1978, at 10 a.m. (local time), in Room 1003, Hearing Room C, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned.

For information concerning the substance and other details in this proceeding, interested persons are referred to the order of Administrative Law Judge issued simultaneously.

Dated at Washington, D.C., May 1, 1978.

RICHARD M. HARTSOCK,
Administrative Law Judge.

[FR Doc. 78-12495 Filed 5-5-78; 8:45 am]

[6320-01]

[Docket 31955]

TWIN CITIES-LAS VEGAS/PHOENIX/SAN DIEGO ROUTE PROCEEDINGS

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on June 8, 1978, at 10 a.m. (local time) at the Airport Conference Room, Mezzanine Floor, Terminal Building, McCarran International Airport, Las Vegas, Nev., before the undersigned.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served on March 2, 1978, and other documents which are in the docket of this proceeding on file in the docket section of the Civil Aeronautics Board.

Dated at Washington, D.C., May 1, 1978.

HENRY M. SWITKAY,
Administrative Law Judge.

[FR Doc. 78-12496 Filed 5-5-78; 8:45 am]

[6335-01]

CIVIL RIGHTS COMMISSION

ARIZONA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Arizona Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 12 noon on May 20, 1978, in the Rodeway Inn, 3400 Grand Avenue, Phoenix, Ariz. 85017.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, Calif. 90012.

The purpose of this meeting is to discuss State Advisory Committee program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 2, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-12371 Filed 5-5-78; 8:45 am]

[6335-01]

HAWAII ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Hawaii Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 9:30 p.m. on May 22, 1978, at the Ala Moana Hotel, 451 Atkinson Drive, Honolulu, Hawaii 96814.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, Calif. 90012.

The purpose of this meeting is a discussion of State Advisory Committee program planning and immigration consultation.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 2, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

FR Doc. 78-12370 Filed 5-5-78; 8:45 am]

[6335-01]

MINNESOTA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Minnesota Advisory Committee (SAC) of the Commission will convene at 5 p.m. and will end at 9 p.m. on May 25, 1978, Radisson Hotel, 11 East Kellogg Blvd., St. Paul, Minn. 55101.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Ill. 60604.

The purpose of this meeting is to review Indian Report and plan follow-up action; report on Redlining Project Interviews.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 2, 1978.

JOHN I. BINKLEY
Advisory Committee Management Officer.

[FR Doc. 78-12369 Filed 5-5-78; 8:45 am]

[6335-01]

NORTH DAKOTA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the North Dakota Advisory Committee (SAC) of the Commission will convene 9:30 a.m. and will end at 12 noon on May 20, 1978, United Tribes Conference Room Building 61, 3315 S. Airport Road, Bismarck, N. Dak. 58501.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Denver, Colo. 80202

The purpose of this meeting is to make plans for paticipation in a regional consultation on energy development.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 2, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-12372 Filed 5-5-78; 8:45 am]

[6335-01]

WASHINGTON ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Washington Advisory Committee (SAC) of the Commission will convene at 2 p.m. and will end at 5 p.m. on May 25, 1978, 915 Second Avenue, Room 2854, Seattle, Wash. 98174.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northwestern Regional Office of the Commission, 915 Second Avenue, Room 2852, Seattle, Wash. 98174.

The purpose of this meeting is to brief SAC on program planning conference and discuss possible co-sponsored consultation with Superintendent of Public Instructions Office on school desegregation.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 3, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-12373 Filed 5-5-78; 8:45 am]

[3510-12]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

SEA GRANT REVIEW PANEL

Partially Closed Meeting

The Sea Grant Review Panel will meet on May 30 and 31, 1978, from 9 a.m. to 5 p.m. each day, in the Penthouse of the Page Building, 2001 Wisconsin Avenue NW., Washington, D.C.

The Panel was established in December 1976 under section 209 of the National Sea Grant Program Improvement Act (Pub. L. 94-461), and advises the Secretary of Commerce with respect to:

a. Applications or proposals for, and performance under, grants and contracts awarded under Sections 205 and 206 of the Act;

b. The Sea Grant Fellowship Program, established under section 208 of the Act;

c. The designation and operation of Sea Grant Colleges and Sea Grant Regional Consortia (which are provided for in section 207 of the Act) and the operation of Sea Grant programs;

d. The formulation and application of the planning guidelines and priorities established by the Secretary under Section 204(2) of the Act and applied by the Director in accordance with Section 204(c)(1); and

e. Such other matters as the Secretary refers to the Panel for review and advice.

The Panel's meeting agenda is as follows:

May 30, 1978 (9 a.m. to 5 p.m.)

9 a.m.—Preliminary remarks, introduction and swearing in of new members.

9:30 a.m.—A. The nature and current posture of, and problems facing, the National Sea Grant Program, and the tasks before the Panel. A discussion by the Director and the Panel Chairman.

10:30 a.m.—B. Discussion of Institutional and Coherent Area Programs reviewed since last meeting:

University of Rhode Island; University of Miami; University of Michigan; South Carolina Program; Louisiana State University; Texas A&M University; Woods Hole Oceanographic Institution; University of Wisconsin; University of California; University of Southern California; and New Jersey Consortium.

3 p.m.—C. Discussion of changes in renewal dates (Hawaii) and progress toward two-year review cycle. Report on second year negotiations with:

Massachusetts Institute of Technology; University of Delaware; and Oregon State University.

3.30 p.m.—D. Sea Grant College Candidates Discussion. The following are eligible on the basis of time to be considered for designation as Sea Grant Colleges:

University of Southern California; Louisiana State University; and University of Georgia.

4 p.m.—E. Closed Session Discussion regarding Agenda Items B and D.

5 p.m.—Recess.

May 31, 1978 (9 a.m. to 5 p.m.)—Joint Meeting with Council of Sea Grant Directors

9 a.m.—F. Panel business, setting next meeting, election of vice-chairman.

9:30 a.m.—G. Organization of Office of Sea Grant.

10 a.m.—H. Discussion with Assistant Administrator for R. & D.

11 a.m.—I. Presentation by Sea Grant Directors, J. National Projects, K. International Sea Grant, L. Fellowship Program, M. Legislative Interaction.

5 p.m.—Adjourn.

All agenda items will be open to public attendance, except for Agenda Item E, a one-hour portion at the end of the discussion of all institutions under Agenda Items B and D, in accordance with 5 U.S.C. 552b(c)(6), as determined by the Assistant Secretary for Administration, pursuant to subsection 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended. Approximately 10 seats will be available to the public on a first-come, first-served basis. If time permits before the scheduled adjournment, the Chairman will solicit oral comments by the attendees. Written statements may be submitted at any time before or after the meeting.

Minutes of the meeting will be available 30 days thereafter on written request addressed to the National Sea Grant Program, 3300 Whitehaven Street NW., Washington, D.C. 20235.

For further information, contact Dr. Hugh J. McLellan, Acting Associate Director for Programs, at above address, telephone 202-634-4019.

Dated: May 3, 1978.

R. L. CARNAHAN,
Deputy Assistant Administrator for Administration, National Oceanic and Atmospheric Administration.

[FR Doc. 78-12407 Filed 5-5-78; 8:45 am]

[3510-22]

MYSTIC MARINELIFE AQUARIUM

Notice of Receipt of Application for Permit

Notice is hereby given that an applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the regulations governing the taking and importing of marine mammals (50 CFR Part 216).

1. Applicant: (a) Name: Mystic Marinelife Aquarium (P13I, Mr. Stephen Spotte, Vice President. (b) Address: Mystic, Conn. 06355.

2. Type of permit: Public display.

3. Name and number of animals: Bottlenose dolphins (*Tursiops truncatus*), 4.

4. Type of take: To capture and maintain in a permanent facility.

5. Location of activity: Off Fort Myers, Fla.

6. Period of activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above-described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before June 7, 1978. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.:

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Fla. 33702; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Mass. 01930.

Dated: May 3, 1978.

ROLAND FINCH,
Acting Deputy Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc. 78-12493 Filed 5-5-78; 8:45 am]

[3510-22]

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Public Meeting With Partially Closed Session

Notice is hereby given of a meeting of the South Atlantic Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The meeting will be held Tuesday, Wednesday, and Thursday, May 23, 24, and 25, 1978, in the Ramada Inn, Interstate 26 and Highway 378, Columbia, S.C. 29202. The meeting will convene at 1:30 p.m. on May 23, and adjourn at about noon on May 25, 1978. The daily sessions will start at 8:30 a.m. and adjourn at 5 p.m. except as otherwise noted. The meeting may be extended or shortened depending on progress on the agenda.

Proposed Agenda: May 23: (1) Management plans; (2) Personnel and administration categories; (3) Review of foreign fishing applications, if any; *May 24:* (1) Closed session to discuss proposals by potential contractors in negotiated procurement of the preparation of a draft fishery management plan; (2) Other fishery management business; *May 25:* (1) Other fishery management business.

With the exception of the first agenda item on May 24 the meeting is open to the public. For information on seating arrangements, changes to the agenda, and/or written comments, contact: Mr. Ernest D. Premetz, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, S.C. 29407, telephone: 803-571-4366.

The closed session is planned for 8:30 a.m. until 10 p.m., but may continue beyond this time to discuss proposals by potential contractors in a negotiated procurement for the preparation of a draft fishery management plan.

The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of the General Counsel, formally determined on May 4, 1978 pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda item covered in the closed session may be exempt from the provisions of the Act relating to open meetings and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C., section 552b(c) (4), (6), and (9)(B). (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Record Inspection Facility, Room 5317, Department of Commerce.)

Dated: May 5, 1978.

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

[FR Doc. 78-12654 Filed 5-5-78; 10:27 am]

[6355-01]

CONSUMER PRODUCT SAFETY COMMISSION

ADVISORY COMMITTEE APPLICATIONS

Extended Deadline

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of deadline for submission of advisory committee applications to May 31, 1978.

SUMMARY: In March 7, 1978 FEDERAL REGISTER (43 FR 9330), the Commission announced that it was seeking applications to fill vacancies on its three advisory committees: the Product Safety Advisory Council, the Technical Advisory Committee on Poison Prevention Packaging, and the National Advisory Committee for the Flammable Fabrics Act. This notice announces an extension of the deadline for submittal of applications from May 19 to May 31, 1978. Applications for membership on the committees are available from and should be returned to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR ADDITIONAL INFORMATION CONTACT:

Dee Wilson, Committee Management Officer, Office of the Secretary, 202-634-7700.

Dated: May 2, 1978.

SADYE E. DUNN,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 78-12361 Filed 5-5-78; 8:45 am]

[3710-08]

DEPARTMENT OF DEFENSE

Department of the Army

CHANGE OF MISSION AT FORT ORD, CALIF.

Notice of Filing of Environmental Impact Statement

In compliance with the National Environmental Policy Act of 1969, the Army, on April 28, 1978, provided the Environmental Protection Agency, as required by the Council on Environmental Quality, a Draft Environmental Impact Statement (DEIS) concerning the permanent stationing of the 7th Infantry Division (-) at Fort Ord, Calif.

Copies of the statement have been forwarded to concerned Federal, State and local agencies. Interested organizations or individuals may obtain copies from Commander, 7th Infantry Division (-) and Fort Ord, Attention: AFZW-FE-E, Fort Ord, Calif. 93941, telephone 408-242-4505.

In the Washington area, inspection copies may be seen during normal duty hours in the Environmental Office, Office of Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, D.C. 20310, telephone 202-694-3434.

BRUCE A. HILDEBRAND,
Deputy for Environmental Affairs, Office of the Assistant Secretary of the Army (Civil Works).

[FR Doc. 78-12432 Filed 5-5-78; 8:45 am]

[3810-70]

Defense Investigative Service

PRIVACY ACT OF 1974

Amendment of Record System

AGENCY: Defense Investigative Service (DIS).

ACTION: Notice of record system amendment.

SUMMARY: The DIS is amending an existing record system notice.

DATES: This amended record system shall be effective as proposed without further notice June 7, 1978, unless comments are received on or before June 7, 1978, which would result in a contrary determination and require republication for further comments.

ADDRESS: Send comments to the System Manager identified in the record system.

FOR FURTHER INFORMATION CONTACT:

Lt. Col. Dale L. Hartig, Assistant for Information, telephone, 202-693-1740.

SUPPLEMENTARY INFORMATION: The DIS system of records notices prescribed by the Privacy Act of 1974, Pub. L. 93-579 (5 U.S.C. 552a) have been published in the FEDERAL REGISTER as follows:

FR Doc. 7-28255 (42 FR 51425) September 28, 1977.
FR Doc. 77-33100 (42 FR 59318) November 16, 1977.

DIS is proposing to amend an existing record system notice published September 28, 1977, at 42 FR 51432. This proposed amendment does not fall within the purview of an altered system requiring a report to the Office of Management and Budget (OMB) under the provisions of OMB Circular A-108, Transmittal Memorandum No. 1, dated September 30, 1975, and Transmittal Memorandum No. 3,

dated May 17, 1976, set forth in the FEDERAL REGISTER (40 FR 45877) on October 3, 1975. Following the specific change to the system notice being amended, the system notice is republished in its entirety, as amended.

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

MAY 3, 1978.

V5-01

System name: V5-01 Investigative Files System (42 FR 51432) September 28, 1977.

Changes:

Systems exempted from certain provisions of the Act: On line 5 of this element describing the provisions of the Act from which this system has been exempted which now reads ". . . (5) and (8); (g) and (o)." is amended to read ". . . (5) and (8); and (g)."

V5-01

System name:

V5-01 Investigative File System

System location:

Defensive Investigative Service (DIS), Investigative Files Division, (D0840) P.O. Box 1211, Baltimore, MD 21203 has primary control over the system and is responsible for the maintenance of completed investigative records. The Special Investigations Center, 1000 Independence Avenue SW., Washington, D.C. 20314 maintains limited categories of these records. DIS operational centers; District Offices; Field Offices; Resident Agencies and various DIS headquarters staff elements originate and have temporary control over portions of records.

Categories of individuals covered by the system:

Military personnel who are on active duty, applicants for enlistment or appointment and reservists and National Guardsmen; DoD civilian personnel who are paid from appropriated funds; industrial or contractor personnel who are working in private industry in firms which have contracts involving access to classified DoD information or installations; Red Cross personnel and personnel paid from nonappropriated funds who have DoD affiliation; ROTC cadets; former military personnel; individuals residing on, having authorized official access to, or conducting or operating any business or other functions at any DoD installation facility.

Individuals not affiliated with the Department of Defense when, during the previous year, their activities have directly threatened the functions, property or personnel of the DoD or they have engaged in, or conspired to engage in, criminal acts on DoD installations or directed at the DoD.

Categories of records in the system:

Official Reports of Investigations (ROI's) prepared by DIS or other DoD, Federal, state or local official investigative activities.

DIS Information Summary Reports (ISR's) which record unsolicited information received by DIS concerning a person or incident which is of direct interest to other DoD components or Federal agencies. (When such information is received by DIS it is reported as it was received, without investigation or confirmation, by ISR and transmitted to the interested activity.)

Attachments to ROI's or ISR's including exhibits, subject or interviewed statements, police records, medical records, fingerprint cards, credit bureau reports, employment records, education records, release statements, summaries of or extracts from other similar records or reports.

Case control and management documents which are not reports of investigation, but that serve as the basis for investigation, or serve to guide and facilitate investigative activity, including documents providing the data to open and conduct the case, such as the Personnel Security Investigation Request; documents, initiated by the subject such as personnel history documents, and fingerprint records; and documents used in case management and control, such as release statements, case transfer forms, and documents directing the inquiry.

DIS file administration and management documents accounting for the disclosure, control and access to a file, such as warning sheets, separators, forwarding correspondence and accounting records required by 5 U.S.C. 552 and 552a.

Cross references to chronological correspondence files disclosing unfavorable and administrative action taken based on DIS investigations.

Authority for maintenance of the system:

Section 301 of 5 U.S.C. Departmental Regulations.

Section 310 of 44 U.S.C. Records Management.

Sections 2, 3, 4, 5, 6, 8 and 9, Executive Order 10450, Security Requirements for Government Employment.

Section 6(A), Executive Order 11652, Classification and Declassification of National Security Information and Material.

Sections III and V, DoD Directive 5105.42, Charter for the Defense Investigative Service.

Section IIIA, DoD Directive 5200.2b, Defense Investigative Program.

Section IV A and B, DoD Directive 5200.27 Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense.

Section IX, DoD Directive 5210.7, Department of Defense Civilian Applicant and Employee Security Program.

Section I, DoD Directive 5210.8, Policy on Investigation and Clearance of DoD Personnel for Access to Classified Defense Information.

Section VII, DoD Directive 5210.9, Military Personnel Security Program.

Section V A 2., DoD Instruction 5210.25, Security Acceptability of American National Red Cross Employees at Department of Defense Installations and Activities.

Section I, DoD Instruction 5210.26, Investigation of American National Red Cross Employees on Duty at Department of Defense Installations and Activities in the Zone of Interior.

Encl 3, paragraphs b 2 and 3, DoD Directive 5210.41, Security Criteria and Standards for Protecting Nuclear Weapons.

Section III, DoD Directive 5210.45, Personnel Security in the National Security Agency.

Section VII, DoD Directive 5210.55, Selection of Department of Defense Military and Civilian Personnel for Assignment to Presidential Support Activities.

Section IV, C, DoD Directive 5220.6, Industrial Personnel Security Clearance Program.

Section V B, DoD Instruction 5220.28, Application of Special Eligibility and Clearance Requirements in the SIOP-ESI Program for Contractor Employees.

Section 1 (a) and 2, Executive Order 10865, Safeguarding Classified Information Within Industry.

Section III, DoD Instruction 5030.34, Agreement between the Department of Defense concerning Protection of the President and Other Officials.

Paragraph 10, Director of Central Intelligence Directive No. 1/14, Uniform Personnel Security Standards and Practices Governing Access to Sensitive Compartmented Information C.

Section II, DSA Regulation 5705.2, Criminal Investigative Support to the Defense Supply Agency.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Purpose for which collected.

Personnel security investigative information is collected to insure that the acceptance or retention of persons to sensitive DoD positions, or granting individuals access to classified information, including those employed in defense industry, is clearly consistent with national security.

Criminal investigative information is collected on request to identify offenders, provide facts and evidence upon

which to base prosecution and effect the recovery of property which has been wrongfully appropriated.

Information contained in ISR's (see description in RECORD-CATEGORY) regarding criminal, personnel security, counterintelligence, or intelligence matters, when received, is disseminated to appropriate Federal agencies or other DoD components.

Criminal and personnel security information is collected during recprocal investigations conducted for other DoD and federal investigative elements (or in limited instances, criminal information for local, or state law enforcement agencies) for maintenance and use by the requesting acitivity.

Information regarding alleged security violations is collected on request to establish whether or not a compromise occurred and to identify the personnel involved.

Criminal information received by DIS personnel in the course of their duties which is of direct interest to a local law enforcement agency and therefore furnished to that agency orally or by letter.

Users of DIS investigative information are:

(1) DIS personnel in the course of their official duties.

(2) Other accredited DOD investigative components, DOD agencies, elements of the Military Departments designated by the departments and representatives of the Secretary of Defense and the Joint Chiefs of Staff.

(3) Accredited Federal criminal and civil law enforcement and intelligence agencies.

(4) State and local official criminal law enforcement agencies.

(5) Other accredited federal agencies conducting investigations to evaluate suitability for employment or access to classified information.

(6) Congressional committees and the Government Accounting Office.

Specific uses of DIS investigative records are:

To determine the loyalty, suitability, eligibility, and general trustworthiness of individuals for access to Defense information and facilities by the first two categories of users, above.

To determine the eligibility and suitability of individuals for entry into and retention in the Armed Forces by the second category of users, above.

To provide information pertinent to the protection of persons under the provisions of 18 U.S.C. 3056, by the first three categories of users, above.

For use in criminal law enforcement investigations including statutory violations, counterintelligence, as well as counterespionage and other security matters by the first through fourth and the sixth categories of users, above.

In the event that records maintained in this system indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

To provide information in judicial or adjudicative proceedings including litigation, or in accordance with a court order by the first three categories of users, above.

To make statistical evaluations of DIS investigative activities by the first, second and sixth categories of users, above.

To respond to Freedom of Information and Privacy Act access requests, by the first category of users, above.

To provide information in response to Inspector General, and EEO or other complaint investigations and Congressional inquiries by the first, second and sixth categories of users, above.

To determine the eligibility and suitability of an individual for personnel actions in the Armed Forces of the United States, as deemed appropriate by the second category of users, above.

A record such as identification data, from this system of records may be disclosed as a routine use to a federal, state local or foreign agency maintaining relevant information or to business enterprises to obtain employment records if necessary to obtain information relevant to an assigned investigation.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter by any agency of the first, second, third, or fifth categories of users, above.

Transfers of information from this record system to other DoD components is a routine intra-agency use under the provisions of 5 U.S.C. 552a3(b)(1).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders, microfilm, magnetic tape or supplementary index cards.

Retrievability:

Investigations are centrally retrievable through the DIS Case Control System (DCCS) or the Defense Central Index of Investigations (DCII) systems described separately in this notice. Reciprocal investigations jurisdictions, may be retrieved only through a limited manual disclosure accounting system.

Safeguards:

Completed investigative records are maintained and stored in power files, open shelves and filing cabinets which are housed in secured areas accessible only to authorized personnel who are properly screened and have a need to know. Information contained on magnetic tape is secured in the same manner as the DCII, described separately. Recipients of investigative information are responsible for safeguarding information within the guidelines provided by DIS.

Retention and disposal:

Retention of closed DIS investigative files is authorized for 30 years maximum, except as follows: (1) Files which have resulted in adverse action against an individual will be retained permanently, (2) Files developed on persons who are being considered for affiliation with the Department of Defense will be destroyed within one year if the affiliation is not completed. In cases involving a pre-appointment investigation, if the appointment is not made due to information developed by investigation, the file will be retained permanently. If the appointment is not made for some other reasons not related to the investigation, the file will be destroyed within one year; (3) Information within the purview of the Department of Defense Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense", is destroyed within 90 days after acquisition by DIS unless its retention is required by law or unless its retention has been specifically authorized by the Secretary of Defense or through the Chairman, DIRC.

Generally, ISR's and reciprocal investigations are retained for only 60 days.

Partial duplicate records of personnel security investigations are retained for 60 days by DIS field elements. Partial duplicate records in criminal and special investigations are retained for one year.

System manager(s) and address:

Director, Defense Investigative Service, 1000 Independence Ave. SW., Washington, D.C. 20314

Notification procedure:

Requests should be addressed to the Assistant for Information, Defense Investigative Service, 1000 Independence Ave. SW., Washington, D.C. 20314.

The full name, date and place of birth, and social security account number are necessary for retrieval of information. More information or a notarized statement verifying the identity of requesters may be required. The Information Office, at Room 2H043 1000 Independence Avenue, Washington, D.C. 20314 may be visited by personnel making inquiries regarding this system. A Check of personal identification will be required of all visitors making such inquiries.

Record access procedures:

Access may be obtained through the Information Office at the address listed above.

Contesting record procedures:

DIS rules for contesting and appealing initial determinations may be obtained from the Assistant for Information at the address listed above.

Record source categories:

Categories of sources of records.
Subjects of investigations.
Records of other DoD activities and components.
Federal, state, county and municipal records.
Employment Records of private business and industrial firms.
Educational and disciplinary records of schools, colleges, universities, technical and trade schools.
Hospital, clinic and other medical records.
Records of commercial enterprises such as real estate agencies, credit bureaus, loan companies, credit unions, banks and other financial institutions which maintain credit information on individuals, transportation companies, (airlines, railroad, etc.)
The interview of individuals who are thought to have knowledge of the subject's background and activities.
The interview of witnesses, victims and confidential sources.
The interview of any individuals deemed necessary to complete the DIS investigation.
Miscellaneous directories, rosters and correspondence.
Any other type of record deemed necessary to complete the DIS investigation.

Systems exempted from certain provisions of the act:

In accordance with subsection 3j(2) of the Act, information maintained by the Special Cases Division of DIS may be exempted from the provisions of subsections (c)(3) and (4); (d); (e) (1), (2) and (3); (e) (5) and (8); and (g). Information maintained by, or at the direction of, this unit includes criminal investigations for which the DIS has primary responsibility and certain ISR's and reciprocal investigations, and security or counterintelligence information which may be used in criminal prosecution. The withholding of this information will be to allow the DIS Special Cases Division, a criminal law enforcement component, to conduct effective investigations into alleged unlawful activity or crime conductive situations without jeopardizing such investigations. Knowledge of the investigations of the Special Cases Division could enable subjects to take actions to prevent detection of criminal activities, conceal evidence, or to escape prosecution. It could also lead to intimidation of or harm to sources, informants, witnesses and their families. Information from this system will be withheld only to the extent that its release would interfere with such investigations.

Under subsection 3k(1) of the Act, properly classified material contained in DIS investigatory files is exempt from the provisions of subsection (d). This exemption will protect information, the disclosure of which would have an adverse effect on the national defense or foreign policy.

Under subsection 3k(2) of the Act, other investigatory material including certain reciprocal investigations and counterintelligence information is exempt from subsection (c)(3), (d), (e)(4) (G, H and I) and (f) until such time as action is taken regarding allegations, and after that time only to the extent that the information would identify a confidential source who furnished information under an express promise that the identity of the source would be held in confidence (or prior to the effective date of the Act under an implied promise). This exemption will permit the DIS to conduct certain law enforcement investigations effectively and to protect the identities of sources who would not otherwise provide information.

Protective Service: Under subsection 3k(3) of the Act, DIS investigatory material maintained in connection with assisting the US Secret Service (USSS) to provide protective services to the President of the United States or other individuals pursuant to section 3056 of Title 18 is exempt from subsections (c)(3), (d), (e)(1), (e)(4), (g, h and i), and (f). This exemption provision will enable DIS to continue its support of the US Secret Service without compromising the effectiveness of either activity.

Under subsection 3k(5) of the Act, personnel security investigatory material from subsections (c)(3), (d) and (f), is exempt to the extent that the disclosure of such material would reveal the identity of a confidential source as described above. This exemption provision will allow DIS to collect information from certain sources who would otherwise be unwilling to provide information necessary to personnel security investigations.

[FR Doc. 78-12451 Filed 5-5-78; 8:45 am]

[3810-70]

Office of the Secretary

DEPARTMENT OF DEFENSE WAGE COMMITTEE

Notice of Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, effective January 5, 1973, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, July 11, 1978; Tuesday, July 18, 1978; and Tuesday, July 25, 1978, at 9:45 a.m. in Room 1E801, the Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, the Federal Advisory Committee Act, meetings may be closed to the public when they are "concerned with matters listed in section 552b. of Title 5, United States Code." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency" (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by contacting the Chairman, Department of Defense Wage Committee, Room 3D281, the Pentagon, Washington, D.C.I06Maurice W. Roche,

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

MAY 3, 1978.

[FR Doc. 78-12429 Filed 5-5-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

CRUDE OIL

Inquiry on the Transportation System Serving the Northern Tier and Inland States; Correction

In FR Doc. 78-11021 appearing at page 17392 in the issue for Monday, April 24, 1978, the following corrections should be made:

1. Page 17392, middle column. The date in the preamble for the caption: "COMMENTS BY" should read "May 30" vice "May 31".

2. Page 17392, middle column, in the preamble under the caption: "ADDRESS TO", 12th line. The request to speak date should read "May 5" vice "May 15".

3. Page 17393, middle column, section B.1, second paragraph, 8th line. Delete the following: "Public Hearing Management, 2000 M Street NW., Box SS, Washington, D.C. 20461, and must be received before 4:30 p.m. on May 12, 1978, for the Chicago hearing and May 17 for the Seattle hearing." Add: "the Chicago and Seattle addresses, as appropriate. Chicago—Charles Swank, Region 5, DOE, 175 West Jackson Boulevard, Chicago, IL 60604; and Seattle—Lee Johnson, Federal Building, 915 2nd Avenue, Room 1992, Seattle, WA 98174. Such requests must be received before 4:30 p.m. on May 5, 1978 for both the Chicago and Seattle hearings."

4. Page 17393, middle column, section B.1, 4th paragraph. Delete the last three lines beginning with "Public Hearing * * * 20461" and add: "the Chicago and Seattle addresses listed above."

Issued in Washington, D.C., on May 3, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration.

[FR Doc. 78-12439 Filed 5-5-78; 8:45 am]

[3128-01]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF ADMINISTRATVE REVIEW

Week of January 30 through February 3, 1978

Notice is hereby given during the week of January 30 through February 3, 1978, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Administrative Review and the basis for the dismissal.

Appeals

Peters Fuel Corp., Oakland, Md., FXA-1374, Refined Products

The Peters Fuel Corp., filed an Appeal from that portion of a March 30, 1977 Decision and Order in which the FEA had denied the firm's request for retroactive exception relief from the provisions of 10 CFR 212.93. *Peters Fuel Corp.*, 5 FEA Par. 80,588 (March 30, 1977). If the Appeal were granted, Peters would have been relieved of its obligation under a Remedial Order to refund previous overcharges to its customers. In its Appeal, Peters claimed that the March 30 Decision erred in rejecting its contention that in the absence of retroactive exception relief the firm would experience a negative cash flow during its fiscal year ended January 31, 1977. The DOE analyzed the financial data which Peters had submitted on Appeal, and found that the firm has made certain discretionary prepayments for obligations which did not accrue during the fiscal period concerned. As a result, the DOE determined that Peters had understated the amount of cash which was available to the firm. After recalculating the firm's cash flow position to eliminate the effect of the prepayment items, the DOE concluded that Peters had realized a positive rather than a negative cash flow during its 1977 fiscal year. The Peters Appeal was accordingly denied.

Rickelson Oil and Gas Co., Tulsa, Okla., FRA-1399, Crude Oil

Rickelson Oil and Gas Co. (Rickelson) appealed from a Remedial Order which Federal Energy Administration Region VI issued to the Firm on July 5, 1977. In its Appeal Rickelson challenged the Remedial Order's determination that the firm had incorrectly classified seven of its crude oil producing properties as stripper well leases. After considering Rickelson's Appeal, the Department of Energy rejected the firm's contention that in determining the number of wells on a producing property the firm should be permitted to include injection wells and should also be permitted to count as two wells single wells which produce crude oil from two separate formations. The DOE determined that the Remedial Order's findings in this respect were supported by DOE rulings and precedents established in prior cases. The DOE further considered evidence which Rickelson presented in order to demonstrate that its Nitchey, Ellen and Rhoda Cumsey "A" leases had more crude oil producing wells in operation during relevant qualifying periods than the number specified in the Remedial Order. After considering the evidence submitted, the DOE concluded that the Remedial Order did not contain sufficient findings of fact with respect to the number of wells on the Ellen and Rhoda Cumsey "A" leases. Consequently, the DOE remanded portions of the Remedial Order for further findings of fact regarding the stripper well status of these two leases. In all other respects the Remedial Order was affirmed..

Texfel Petroleum Corp., Dallas, Tex., DFA-0102, Freedom of Information

Texfel Petroleum Corp. (Texfel) appealed from a partial denial by the DOE Information Access Officer of a request for information which the firm had submitted under the Freedom of Information Act (the Act). In its request, Texfel sought access to certain material relating to an audit of the firm which had been conducted by the FEA in April 1975. The Information Access Officer released portions of one document in response to the firm's request but concluded that the remainder of that document was exempt from disclosure as an intra-agency memorandum under Exemption 5 of the Act. In considering Texfel's Appeal, the DOE found that the portion of the document which was withheld from disclosure was primarily factual in nature and under applicable law should have been released to Texfel. However, the DOE also determined that the last clause of the disputed material was properly withheld under Exemption 5 since it contained a predecisional opinion regarding Texfel's eligibility for stripper well status. Accordingly, Texfel's Appeal was granted in part and denied in part.

Tosco Corp., Washington, D.C. FXA-1280, Motor Gasoline

Tosco Corp., filed an Appeal from a Decision and Order which was issued to it by the FEA on March 31, 1977. *Tosco Corp.*, 5 FEA Par. 83,124 (March 31, 1977). Tosco's Appeal, if granted, would result in the reversal of the March 31 Decision and the issuance of an order relieving Tosco of any obligation to refund overcharges resulting from the firm's incorrect calculation of its May 15, 1973 selling prices. In addition, the firm would be permitted to continue to utilize the May 15, 1973 selling prices which it had actually been using in determining its maximum allowable selling prices. In considering Tosco's Appeal, the DOE initially reviewed the application of Ruling 1977-5 to the factual circumstances in this case and affirmed the finding of the March 31 Decision that two variable price contracts which Tosco had used to determine its May 15, 1973 prices should not have been considered as relevant transactions in calculating those prices. The DOE determined that, contrary to Tosco's assertion, Ruling 1977-5 is not erroneous as a matter of law, is consistent with the language of the Price Regulations, and is supported by contemporaneous interpretations of the transaction concept. The DOE also found tht Ruling 1977-5 had been issued to clarify the existing regulatory definition of "transaction," rather than to retroactively change the regulations. Nevertheless, the DOE found that there were factors present in this case which made it inequitable to apply the provisions of Ruling 1977-5 to Tosco. The DOE found that Tosco had received a written opinion from an FEA Regional Counsel which was contrary to the Ruling and that Tosco had acted in direct reliance upon that opinion when it purchased the Avon refinery from Philips Petroleum Co. in April 1976. In this regard, the DOE determined that even though the opinion did not constitute a formal interpretation, Tosco had acted reasonably in assuming that it was a definitive determination of the FEA. IN addition, the DOE found that Tosco would have been financially unable to proceed with the refinery acquisition if it had been required to calculate its May 15, 1973 prices in accordance with the Ruling. Tosco's financial data demonstrated that, in the absence of exception relief the firm would experience a severe and irreparable injury as a result of its commitment of substantial assets to acquire the Avon refinery. The DOE therefore concluded that Tosco should be granted retroactive exception relief. The DOE also determined that prospective exception relief was warranted since Tosco continues to own and operate the Avon refinery and the profits which it will realize from the refinery will be significantly less than the profits which it originally anticipated.

United States Department of the Interior, Washington, D.C. FXA-1445, Residual Fuel Oil

The United States Department of the Interior (DOI) filed an Appeal on behalf of the Government of the Northern Mariana Islands (GNMI) from a Decision and Order that was issued to it by the FEA on June 28, 1977. *United States Department of the Interior for the Northern Mariana Islands*, 6 FEA Par. 83,026 (June 28, 1977). In the previous determination, the FEA granted on exception from 10 CFR 211.67(d)(2) which permitted Guam Oil & Refining Co. (Gorco) to earn entitlements for the residual fuel oil which it sold to GNMI. The exception relief, which permitted Gorco to treat its sales to GNMI as occurring within the United States rather than as export sales, had the effect of reducing the cost which GNMI incurred in purchasing residual fuel oil. The exception relief granted was effective as of March 31, 1977. The DOI Appeal, if granted, would make the relief retroactive to April 1, 1976. In considering the Appeal, the DOE found that new information had been presented which supported the DOI claim that additional exception relief should be approved for the period November 1, 1976 through March 31, 1977, since GNMI had actually incurred higher costs for the residual fuel oil which it purchased during that period from Gorco through an intermediate supplier, Mobil Oil Micronesia, Inc. (Mobil). In this regard, the DOE concluded that there was no basis to distinguish between this period and the period following March 31, 1977, since exception relief in the form of additional entitlement benefits which Gorco was required to pass through to GNMI would have the desired effect of reducing GNMI's costs. However, with respect to the period April 1, 1976 through November 1, 1976, the DOE affirmed the previous finding that the DOI request for exception relief was premature since Gorco had not been ordered to make restitution for the entitlements benefits which it had improperly received during that period.

Requests for Exception

Edgington Oil Co., Inc., Los Angeles, Calif., DXE-0081, Crude Oil

Edgington Oil Co., Inc. (Edgington) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would relieve the firm of any obligation to purchase entitlements beginning with the month of December 1977. In support of its exception request, Edgington provided projected financial statements for its current fiscal year ending December 31, 1977 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for the fiscal year. In considering Edgington's exception request, the DOE determined that as a result of Edgington's crude oil runs and receipts during the current fiscal year, the firm would be required to purchase entitlements at a substantial cost commencing with the month of December 1977. As a result of the projected entitlements cost which Edgington would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. The DOE therefore found that exception relief was warranted under the criteria set forth in *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975) and *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976). Accordingly, the DOE issued a Proposed Decision and Order granting Edgington's Application for Exception and relieving the firm of sufficient entitlement purchase obligations during the period December 1977 through May 1978 to account for its crude oil runs to stills and old oil receipts during the period October 1977 through March 1978. However, the DOE noted that the relief granted to Edgington would be reevaluated if the firm requested an extension of exception relief beyond May 1978 and in any event would be reevaluated at the conclusion of the firm's current fiscal year. The DOE noted that an adjustment will be made and Edgington will be required to purchase entitlements if the DOE finds that the firm has received excessive benefits because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves. Since no Notice of Objection was filed to the Proposed Decision and Order, a Final Decision and Order was issued by the DOE on January 30, 1978.

M. J. Mitchell, Dallas, Tex., DXE-0360, Crude Oil

M. J. Mitchell filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would have resulted in the extension of the exception relief previously granted and would have permitted Mitchell to continue to sell a portion of the crude oil produced from the Mitchell State Minnelusa Sand Unit at upper tier ceiling prices. In considering Mitchell's Application, the DOE found that although the firm's cost of producing crude oil from the Unit had increased since 1973, the lower tier ceiling price for the crude oil which he produced exceeded his current product costs on a per barrel basis. Consequently, the DOE determined that Mitchell had an economic incentive to maintain crude oil production at the Unit in the absence of exception relief. Accordingly, Mitchell's request for an extension of exception relief was denied.

San Joaquin Refining Co., Newport Beach, Calif., DXE-0095 crude oil

San Joaquin Refining Co. filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would relieve the firm of any obligation to purchase entitlements beginning with the month of December 1977. In support of its exception request, San Joaquin provided projected financial statements for its current fiscal year ending April 30, 1978 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for the fiscal year. In considering San Joaquin's exception request, the DOE determined that as a result of San Joaquin's crude oil runs and receipts during the current fiscal year, the firm would be required to purchase entitlements at a substantial cost commencing with the month of December 1977. The DOE further found that as a result of the projected entitlements cost which San Joaquin would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975) and *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976), exception relief was therefore warranted. Accordingly, the DOE issued a Proposed Decision and Order granting San Joaquin's Application for Exception and relieving the firm of sufficient entitlement purchase obligations during the six month period December 1977 through May 1978 to account for its crude oil runs to stills and old oil receipts during However, the DOE noted in the Proposed Decision that the relief granted to San Joaquin would be reevaluated if the firm requested an extension of exception relief beyond May 1978 and in any event would be reevaluated at the conclusion of the firm's current fiscal year. The decision noted that an adjustment will be made and San Joaquin will be required to purchase entitlements if the DOE finds that the firm has received excessive benefits because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves. Since no Notice of Objection was filed to the Proposed Decision and Order, a Final Decision and Order was issued by the DOE on January 30, 1978.

Requests for Modification or Rescission

Leonard E. Belcher, Inc., Springfield, Mass., DRR-0008 No. 2 fuel oil

Leonard E. Belcher, Inc. (Belcher) filed an Application for Modification of a Decision and Order which the FEA issued to the firm on August 17, 1977. *Leonard E. Belcher, Inc.*, 6 FEA Par. 85,023 (August 17, 1977). In that determination, the FEA granted an Application for Stay of a Remedial Order which had been issued to Belcher by FEA Region I on July 19, 1977. However, as an express condition of the stay which was approved, Belcher was required to establish an irrevocable letter of credit. Belcher requested that the August 17 order be modified to eliminate the letter of credit requirement. Belcher contended that the approval of this request would be consistent with the new Remedial Order stay policies adopted in *Rickelson Oil and Gas Co.*, 6 FEA Par. 85,029 (August 24, 1977). In considering the Belcher request, the DOE noted that unlike the situation in the *Rickelson* case, the DOE has already fully considered all of the contentions raised by Belcher in its Appeal of the Remedial Order and has issued a Decision on the merits of that Appeal. *Leonard E. Belcher, Inc.*, 1 DOE Par. 80,183 (January 18, 1978). Since the January 18 Decision and Order rejected all of the contentions raised by Belcher concerning the factual and legal findings of the Remedial Order, the DOE concluded that it would be inappropriate to cancel the letter of credit at the present time. The Belcher Application for Modification was accordingly denied.

Red Carpet Car Wash, Oklahoma City, Okla., FMR—0116 Motor Gasoline

Red Carpet Car Wash filed on Application for Modification of a Decision and Order that was issued to Texaco, Inc. by the DOE Region VI Office on January 26, 1977. In the January 26 determination, Region VI vacated an Assignment Order that had directed a Texaco branded jobber to supply Red Carpet with a base period use of motor gasoline for a car wash-service station which Red Car operated in Oklahoma City, Okla. The Oklahoma City site had previously been occupied by another gasoline retailer before Red Carpet acquired the site and converted it to a combination car wash-service station. The request for modification, if granted, would reinstate the provisions of the original Assignment Order under which Texaco had been required to supply Red Carpet. The DOE determined that the Region VI Decision should be reconsidered in view of the issuance on March 22, 1977 of

Modifications to the Guidelines for Evaluation of Assignment of Supplier and Base Period Use to New Gasoline Retail Sales Outlets. However, the DOE concluded that contrary to Red Carpet's claim, the March 22, 1977 Modifications did not alter the standard that had previously been set forth in Ruling 1975-6 for determining whether a firm which acquires a retail sales outlet qualifies as a "new" wholesale purchaser-reseller. Under the criteria discussed in the Ruling, a firm which succeeded another firm as the operator at a retail site was not eligible to receive an assignment of supplier and base period use as a new wholesale purchaser-reseller if it intended to continue to engage in retail sales at the site, regardless of any changes which it might make in the mode of operations at the site. The DOE found that since Red Carpet had always intended to continue selling motor gasoline at the Oklahoma City site, it failed to qualify as a new retail outlet, despite the conversion of the site to a combined car wash operation. The Red Carpet Application was accordingly denied.

Requests for Stay

Illinois Petroleum Marketers Association; FS Services, Inc. and Affiliated Companies, Springfield, Ill., and Bloomington, Ill., DES-0035 and DES-0037 Gasohol

The Illinois Petroleum Marketers Association (the Association) and FS Services, Inc. and Affiliated Companies (FS) filed Applications for Stay of the Mandatory Petroleum Price Regulations on behalf of retailers in the States of Illinois, Iowa and Wisconsin who wished to sell "Gasohol," a blend of ethyl alcohol and unleaded gasoline. In their Applications, the Association and FS asserted that firms had no economic incentive to distribute Gasohol because the price regulations do not permit them to reflect the cost of the alcohol component in Gasohol in computing their maximum allowable selling prices. In considering the Applications, the DOE noted that on the basis of the current record, sales of Gasohol appeared to be in the public interest. Accordingly, the Applications for Stay were granted. Sellers of Gasohol in Illinois and those sellers of Gasohol in Iowa and Wisconsin that were members of FS were permitted to increase the product costs which they could otherwise to reflect in their selling prices by the difference between the weighted average unit cost of ethyl alcohol in inventory in the current month and the weighted average unit cost of motor gasoline in inventory on May 15, 1973, multiplied by the percentage of ethyl alcohol in the Gasohol blend.

Southwestern Refining Co., Inc., Labarge, Wyo., DES-0483 Crude Oil

On January 25, 1978, the Southwestern Refining Co., Inc. (Southwestern) filed an Application requesting that its obligation to purchase entitlements under the Old Oil Entitlements Program (10 CFR 211.67) during January 1978 be stayed pending a determination on an Application for Exception which the firm also filed. In considering the stay request, the DOE found that Southwestern's financial material supported its contention that it did not have access to the resources necessary to enable the firm to purchase its January 1978 entitlements. Under these circumstances the DOE concluded that Southwestern could incur an immediate serious hardship unless a stay were granted. The Southwestern Application for Stay was therefore granted.

Requests for Exception Received From Natural Gas Processors

The Office of Administrative Review of the Department of Energy has issued a Decision and Order granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processor listed below. The exception relief permits the firm involved to increase the prices of the production of the gas plants listed below to reflect certain non-product cost increases:

Company	Case No.	Plant	Location	Amount of price increase (per gallon)
Gary Operating Co	DXE-0063	Altonah	Duchesne County, Utah	$0.0229
	DXE-0064	Bluebell	Duchesne County, Utah	.0515

SUMMARY DECISIONS

The following firms filed Applications for Stay of Remedial Orders which had been issued to them by the DOE. In considering the stay requests, the DOE referred to a recent Decision in *Rickelson Oil and Gas Co.*, 6 FEA Par. 85,029 (August 24, 1977), in which it held that a Remedial Order will generally be stayed pending the determination of an Appeal unless it appeared that the public interest required immediate compliance with the Remedial Order. Since the record in these cases did not indicate that the public interest required immediate compliance with the Remedial Orders, the DOE granted the requests for stay pending consideration of the Appeals.

Jay Oil Co., Inc., Tulsa, Okla., DRS-0123.

Jedco, Inc., Mobile, Ala., DRS-0117.

United Petroleum, Inc., Tampa, Fla., DRS-0116.

The Office of Administrative Review has issued a summary Decision and Order rescinding the Stay of the refund provisions of a Remedial Order. The Stay was rescinded since the Office of Administrative Review had previously determined that the firm's Appeal of the Remedial Order should be denied:

Maguire Oil Co., Dallas, Tex., DRX-0030.

Dismissals

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Hawthorne Oil & Gas Corp., Lafayette, La., DEE-0406.

Horomet Aluminum Corp., Lancaster, Pa., DEE-0453.

Robert C. Wampler, Allerton, Iowa, DEE-0348.

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.d.t., except holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

MAY 2, 1978.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

[FR Doc. 78-12440 Filed 5-5-78; 8:45 am]

[3128-01]

CASES FILED WITH THE OFFICE OF HEARINGS AND APPEALS

Week of April 7 Through April 14, 1978

Notice is hereby given that during the week of April 7 through April 14, 1978, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in this case may file with the DOE written comments on the application within 10 days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

MAY 2, 1978.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

APPENDIX.—*List of cases received by the Office of Hearings and Appeals*

[Week of Apr. 7 through Apr. 14, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 7, 1978	Beacon Oil Co., Washington, D.C. If granted: DOE would review the entitlements exception relief granted to Beacon Oil Co. during its 1977 fiscal year in order to determine whether the level of relief approved was appropriate.	DEX-0059	Supplemental order.
Do	Brad's Mobil, North Pembroke, Mass. If granted: Brad's Mobil would not be required to file form EIA-8 (retail motor fuels service station survey).	DEE-1005	Exception to the reporting requirements.
Do	Ely Crude Oil Co., Ely, Nev. If granted: Ely Crude Oil Co. would receive a stay of the provisions of 10 CFR 211.67 pending a final determination on its application for exception.	DES-0053	Stay request.
Do	Fondren Park Texaco, Houston, Tex. If granted: Fondren Park Texaco would not be required to file form EIA-8 (retail motor fuels service station survey).	DEE-1006	Exception to the reporting requirements.
Do	Home-Stake Production Co., Tulsa, Okla. If granted: Home-Stake Production Co. would be permitted to sell the crude oil produced from the 1963 Searight project located in Seminole County, Okla., at prices in excess of the lower tier ceiling price.	DEE-1003	Price exception (sec. 212.73).
Do	Jorge's Shell, Miami, Fla. If granted: Jorge's Shell would not be required to file form EIA-8 (retail motor fuels service station survey).	DEE-1007	Exception to the reporting requirements.
Do	Ken's Sinclair Service, Coalville, Utah. If granted: Ken's Sinclair Service would not be required to file form EIA-8 (retail motor fuels service station survey).	DEE-1008	Do.
Do	Texaco, Inc., Los Angeles, Calif. If granted: Texaco, Inc., would be permitted to sell the crude oil produced from the Shiells intermediate zone unit located in Ventura County, Calif., at prices in excess of the lower tier ceiling prices.	DEE-1004	Price exception (sec. 212.73).
Do	Weber Oil Co., Bangor, Maine. If granted: The Feb. 14, 1978, ancillary order issued by DOE region I regarding the Nov. 7, 1977, remedial order issued to C. H. Sprague & Co. would be rescinded.	DEA-0168	Appeal of an ancillary order.
Apr. 10, 1978	Edgington Oil Co., Inc., Washington, D.C. If granted: DOE would review the entitlements exception relief granted to Edgington Oil Co., Inc., during its 1977 fiscal year in order to determine whether the level of relief approved was appropriate.	DEX-0060	Supplemental order.
Do	Husky Oil Co., Denver, Colo. If granted: DOE would review the entitlements exception relief granted to Husky Oil Co. during its 1977 fiscal year in order to determine whether the level of relief approved was appropriate.	DEX-0061	Do.
Do	Richmond Service Center, Providence, R.I. If granted: Richmond Service Center would not be required to file form EIA-8 (retail motor fuels service station survey).	DEE-1009	Exception to the reporting requirements.
Apr. 11, 1978	Burk Royalty Co., Wichita Falls, Tex. If granted: Burk Royalty Co.'s lease No. 2938 and lease No. 3942 located in Placquemines Parish, La., would be classified as stripper well properties.	DEE-1010	Price exception (sec. 212.73).
Do	Fred's Chevron Service Station, Bayport, N.Y. If granted: Fred's Chevron Service Station would not be required to file form EIA-8 (retail motor fuels service station survey).	DEE-1014	Exception to the reporting requirements.
Do	Laguna Petroleum Co., Denver, Colo. If granted: Laguna Petroleum Co. would be permitted to sell the crude oil produced from the No. 1 Lambe lease located in the Border County, Tex., at upper tier ceiling prices.	DEE-1011	Price exception (sec. 212.73).
Do	Phillips Petroleum Co., Bartlesville, Okla. If granted: Phillips Petroleum Co. would be permitted to sell the crude oil produced from the Holder B lease and the Yount B lease located in Oklahoma County, Okla., at upper tier ceiling prices.	DEE-1012 and DEE-1013	Do.
Do	Swanton Interstate Sunoco, Swanton, Vt. If granted: Swanton Interstate Sunoco would not be required to file form EIA-8 (retail motor fuels service station survey).	DEE-1015	Exception to the reporting requirements.
Apr. 12, 1978	Charter Oil Co., Jacksonville, Fla. If granted: DOE would review the entitlements exception relief granted to Charter Oil Co. during its 1977 fiscal year in order to determine whether the level of relief approved was appropriate.	DEX-0063	Supplemental order.
Do	Hodge's Texaco Service Center, Swansboro, N.C. If granted: Hodge's Texaco Service Center would not be required to file form EIA-8 (retail motor fuels service station survey).	DEE-1016	Exception to the reporting requirements.
Do	Indian Wells Oil Co., Kearney, Mo. If granted: The applicant would be permitted to increase its prices to reflect nonproduct cost increases incurred in producing natural gas liquids and natural gas liquid products.	DXE-1018	Extension of the relief granted in *Indian Wells Oil Company*, case No. DXE-0070 (decided Feb. 13, 1978) (unreported decision).

APPENDIX.—*List of cases received by the Office of Hearings and Appeals*—Continued

[Week of Apr. 7 through Apr. 14, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Do	Maingas Service, Waterville, Maine. If granted: Maingas Service would be permitted to increase its prices for propane above the maximum levels allowed under the mandatory petroleum price regulations.	DEE-1019	Price exception (sec. 212.93).
Do	Marvel Corp., Boston, Mass. If granted: Marvel Corp. would not be required to file form EIA-9 (No. 2 heating oil supply/price monitoring report).	DEE-1017	Exception to the reporting requirements.
Do	Mohawk Petroleum Corp., Los Angeles, Calif. If granted: DOE would review the entitlements exception relief granted to Mohawk Petroleum Corp., Inc., during its 1977 fiscal year in order to determine whether the level of relief approved was appropriate.	DEX-0064	Supplemental order.
Do	Northland Oil & Refining Co., Tulsa, Okla. If granted: Northland Oil & Refining Co. would receive a stay of its April entitlement purchase obligations pending a final determination on its application for exception.	DES-0054	Stay request.
Do	W. W. Lindsey and W. E. Elliott, Pikeville, Ky. If granted: W. W. Lindsey and W. E. Elliott would receive an evidentiary hearing with respect to its pending objection to the Mar. 6, 1978, proposed remedial order.	DEH-0014	Evidentiary hearing.
Do	Wesreco, Inc., Woods Crossing, Utah. If granted: Wesreco, Inc., would receive a stay of the requirements of the by/sell list as published in the FEDERAL REGISTER on Mar. 3, 1978, pending a final determination on its appeal.	DES-0166	Stay request.
Apr. 13, 1978	Butler, Binion, Rice, Cook & Knapp, Houston, Tex. If granted: The DOE's Mar. 14, 1978, information request denial would be rescinded and Butler, Binion, Rice, Cook & Knapp would receive access to additional DOE data regarding the definition of posted price contained in 10 CFR 212.31.	DFA-0171	Appeal of an information request denial.
Do	Chester F. Dolley, Los Angeles, Calif. If granted: Chester F. Dolley's O.K. & B, Nance, Porter, and Vineyard leases would be classified as stripper well properties on a retroactive basis.	DEE-1020	Price exception (sec. 212.73).
Do	O. B. Mobley, Jr., Shreveport, La. If granted: Mobley would be permitted to compute a unit base production control level for the Lewisville-Smackover lime unit using the provisions of 10 CFR 212.75.	DEE-1021	Price exception (sec. 212.75).
Do	O. B. Mobley, Jr., Shreveport, La. If granted: The DOE's Mar. 16, 1978, interpretation 1978-6 regarding certifying production under 10 CFR 212.75 would be rescinded.	DIA-0170 and DES-0170	Appeal of an interpretation stay request.

[FR Doc. 78-12456 Filed 5-5-78; 8:45 am]

[3128-01]

ISSUANCE OF PROPOSED DECISIONS AND ORDERS BY THE OFFICE OF HEARINGS AND APPEALS

April 10 through April 14, 1978

Notice is hereby given that during the period April 10 through April 14, 1978, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of a Proposed Decision and Order in final form may file a written Notice of Objection within 10 days of service. For purposes of the new procedures, the date of service of notice of issuance of a Proposed Decision and Order shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in

the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays.

MAY 2, 1978.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

Paul S. Ache, Jr., Houston, Tex., DEE-0059, Crude Oil

Paul S. Ache, Jr., filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Ache to sell the crude oil which is produced from the Katie Brown lease for his benefit at upper-tier ceiling prices. On April 14, 1978, the DOE issued a proposed decision and order which determined that Ache should be permitted to sell 41.38 percent of the crude oil produced for his benefit at upper-tier ceiling prices.

Guam Oil & Refining Co., Inc., Dallas, Tex., FEE-4105, Crude Oil

The Guam Oil & Refining Co., Inc., filed an application for exception from the provisions of 10 CFR 211.67(a). The exception request, if granted, would permit Gorco to earn entitlements with respect to the unfinished oils component of its refinery feedstocks. Gorco requested that this exception relief be implemented on both a prospective and a retroactive basis. On April 14, 1978, the DOE issued a proposed decision and order in which it determined that the Gorco request for exception relief should be denied.

Meason Operating Co., Natchez, Miss., DXE-0946, Crude Oil

Meason Operating Co. (Meason) filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Meason to continue to sell quantities of crude oil produced from the Arnold Perry well located in Wilkinson County, Miss., at upper-tier ceiling prices. On April 14, 1978, the DOE issued a proposed decision and order which determined that the exception request should be granted.

S & W Engine Supply Co., Oklahoma City, Okla., FEE-4357, Crude Oil

S & W Engine Supply Co. filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit S & W to continue to sell at upper-tier ceiling prices certain volumes of crude oil produced from the Baker Townsend lease which is located in Oklahoma County, Okla. On April 11, 1978, the Department of Energy issued a proposed decision and order which determined that S & W should be permitted to sell at upper-tier ceiling prices 57.67 percent of the crude oil produced from the Baker Townsend lease for the benefit of the working interest owners.

Tenneco Oil Co., Houston, Tex., DXE-0970, Crude Oil

Tenneco Oil Co. filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to continue selling a portion of the crude oil produced from the Veeder-Hunt lease located in St. Mary Parish, La., at upper-tier ceiling prices. On April 11, 1978, the DOE issued a proposed decision and order which determined that Tenneco should be permitted to sell at upper-tier ceiling prices 49.47 percent of the crude oil produced from the lease for the benefit of the working interest owner.

Texaco, Inc., New Orleans, La., DEE-0200, Crude Oil

Texaco, Inc., filed an application for exception from the provisions of 10 CFR 212.73. The exception request, if granted, would permit Texaco to sell at upper-tier prices all or a portion of the crude oil produced from the BF Reno RA Sand unit, located in the Bayou Fordoche Field, Pointe Coupee Parish, La. On April 14, 1978, the DOE issued a proposed decision and order which determined that the exception request be granted.

[FR Doc. 78-12455 Filed 5-5-78; 8:45 am]

[3128-01]

CASES FILED WITH THE OFFICE OF HEARINGS AND APPEALS

Week of April 14 Through April 21, 1978

Notice is hereby given that during the week of April 14 through April 21, 1978, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in this case may file with the DOE written comments on the application within 10 days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

MAY 2, 1978.

APPENDIX.—*List of cases received by the Office of Hearings and Appeals*

[Week of Apr. 14 through Apr. 21, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 17, 1978	Commonwealth Oil Refining Co., Inc., San Antonio, Tex. If granted: Commonwealth Oil Refining Co., Inc., would receive a stay of pt. 213 pending a final determination on its application for exception (DEE-0611).	DES-0055	Stay request.
Do	Commonwealth Oil Refining Co., Inc., San Antonio, Tex. If Granted: Commonwealth Oil Refining Co., Inc., would received an exception from 10 CFR 211.67 with respect to its entitlement purchase obligations.	DEE-1022	Exception to the entitlements program.
Apr. 18, 1978	Burdett Oxygen Co., Norristown, Pa. If granted: Burdett Oxygen Co. would be assigned a new, lower priced supplier of propane to replace its base period supplier, Ugite Gas, Inc.	DEE-1023	Exception to change suppliers.
Do	Charles F. Haas, Corpus Christi, Tex. If granted: Charles Haas would be permitted to sell the crude oil produced from the A. C. Koch lease located in Wharton County, Tex., at upper tier ceiling prices on a retroactive basis.	DEE-1026	Price exception (sec. 212.73).
Do	Charles F. Haas, Corpus Christi, Tex. If granted: Charles F. Haas would be permitted to classify the Allen-Hamons unit located in Jackson County, Tex., as a stripper well property on a retroactive basis.	DEE-1027	Do.

APPENDIX.—*List of cases received by the Office of Hearings and Appeals*—Continued

[Week of Apr. 14 through Apr. 21, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 18, 1978	Farmland Industries, Inc., Kansas City, Mo. If granted: The applicant would be permitted to increase its prices to reflect nonproduct cost increases incurred in producing natural gas liquids and natural gas liquid products at its Gillette, Lamont, Mertzon, and Quitman plants.	DXE-1039 through DXE-1042	Extension of the relief granted in *Farmland Industries, Inc.*, case Nos. DXE-0090 through DXE-0093 (decided Feb. 13, 1978) (unreported decision).
Do	Gary Operating Co., Englewood, Colo. If granted: The applicant would be permitted to increase its prices to reflect nonproduct cost increases incurred in producing natural gas liquids and natural gas liquid products at its Altonah and Bluebell plants.	DXE-1043 and DXE-1044	Extension of the relief granted in *Gary Operating Company*, case Nos. DXE-0063 and DXE-0064 (decided Feb. 2, 1978) (unreported decision).
Do	J & W Refining, Inc., Dallas, Tex. If granted: J & W Refining, Inc., would receive a stay of the provisions of 10 CFR 211.67 (entitlements program) pending a final determination on its application for exception.	DES-0056	Stay request.
Do	J & W Refining, Inc., Dallas, Tex. If granted: J & W Refining, Inc., would receive an exception from 10 CFR 211.67 with respect to its entitlement purchase obligations beginning with April 1978.	DEE-1029 and DES-1029	Exception from the entitlements program. Stay request.
Do	John Galt, Inc., Hyattsville, Md. If granted: John Galt, Inc., would not be required to file form EIA-9 (No. 2 Heating Oil Supply/Price Monitoring Report).	DEE-1035	Exception from the reporting requirements.
Do	Mohawk Petroleum Corp., Inc., Los Angeles, Calif. If granted: Mohawk Petroleum Corp., Inc., would receive an exception from the provisions of 10 CFR 211.67 with respect to its entitlement purchase obligation for the months of June through November 1978.	DXE-1030	Extension of the relief granted to *Mohawk Petroleum Corp.*, 1 DOE par. 81,059 (Jan. 20, 1978).
Do	Moran Pipe & Supply Co., Inc., Seminole, Okla. If granted: Moran Pipe & Supply Co., Inc., would be permitted to sell the crude oil produced from the Cozar lease located in Seminole County, Okla., at upper tier ceiling prices.	DXE-1028	Extension of the relief granted in *Moran Pipe & Supply Co., Inc.*, 1 DOE par. 81,047 (Jan. 6, 1978).
Do	Ridge General Store, Northwood, N.H. If granted: Ridge General Store would not be required to file form EIA-8 (Retail Motor Fuels Service Station Survey).	DEE-1036	Exception to the reporting requirements.
Do	Union Oil Co. of California, Los Angeles, Calif. If granted: Union Oil Co. of California would be permitted to sell the crude oil produced from the West Richfield Chapman zone unit located in Orange County, Calif. at upper tier ceiling prices.	DEE-1024	Price exception (sec. 212.73).
Do	Wilson-Owens Production Co., Longview, Tex. If granted: Wilson-Owens Production Co. would be permitted to sell the crude oil produced from the W.T. Blackwell lease located in Wood County, Tex., at upper tier ceiling prices.	DEE-1025	Do.
Do	Winsauer's Texaco, Mathis, Tex. If granted: Winsauer's Texaco would be permitted to increase its prices for motor gasoline above the maximum levels allowed under the mandatory petroleum price regulations.	DEE-1034	Price exception (sec. 212.93).
Apr. 19, 1978	Atlantic Oil Co., Los Angeles, Calif. If granted: Atlantic Oil Co.'s Douglas lease would be classified as a stripper well property on a retroactive basis.	DEE-1032	Price exception (sec. 212.73).
Do	Beacon Oil Co., Hanford, Calif. If granted: Beacon Oil Co. would receive an exception from the provisions of 10 CFR 211.67 with respect to its entitlement purchase obligations for the months of June through November 1978.	DEE-1031	Extension of the relief granted to *Beacon Oil Co.*, 1 DOE par. 81,055 (Jan. 20, 1978).
Do	Morton & Dolley, Los Angeles, Calif. If granted: Morton & Dolley would be permitted to sell the crude oil produced from the Hathaway-Bloemer lease at upper tier ceiling prices on a retroactive basis.	DEE-1033	Price exception (sec. 212.73).
Do	PPG Industries, Inc. and Puerto Rico Olefins Co., Washington, D.C. If granted: PPG Industries, Inc. and Puerto Rico Olefins Co., would receive a stay of the provisions of pt. 213 pending a final determination on their application for exception.	DES-0057	Stay request.
Do	Wyoming Refining Co., Denver, Colo. If granted: Wyoming Refining Co. would be granted a motion for discovery in relation to the statement of objections the firm filed pursuant to the Mar. 20, 1978, proposed decision and order issued to Little America Refining Co.	DED-0001	Motion for discovery.
Apr. 20, 1978	Arizona Fuels Corp., Salt Lake City, Utah. If granted: Arizona Fuels Corp. would received an exception from the provisions of 10 CFR 211.67 with respect to its entitlement purchase obligations for the months May through October 1978.	DXE-1046	Exception from the entitlements program.
Do	Edgington Oil Co., Inc., Long Beach, Calif. If granted: Edgington Oil Co., Inc., would receive an exception from the provisions of 10 CFR 211.67 with respect to its entitlement purchase obligations for the months of June through November 1978.	DXE-1047	Extension of the relief granted in *Edgington Oil Co.*, 1 DOE par. —— (Jan. 30, 1978).

APPENDIX.—*List of cases received by the Office of Hearings and Appeals*—Continued

[Week of Apr. 14 through Apr. 21, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 20, 1978	Keith's Exxon, Perry, N.Y. If granted: Keith's Exxon would not be required to file form EIA-8 (Retail Motor Fuels Service Station Survey).	DEE-1037	Exception to the reporting requirements.
Do	Mullins & Prichard, New Orleans, La. If granted: Mullins & Prichard would receive a stay of the provisions of the Mar. 31, 1978, decision and order with respect to the May 9, 1977, remedial order pending judicial review.	DRS—0058	Stay request.
Do	Navajo Refining Co., Washington, D.C. If granted: Navajo Refining Co. would receive an exception from the provisions of 10 CFR 211.67 with respect to its entitlement purchase obligations for the months June through November 1978.	DXE-1048	Extension of the relief granted in *Navajo Refining Co.*, 1 DOE par. 81,061 (Jan. 19, 1978).
Do	Oklahoma Natural Gas Co., Tulsa, Okla. If granted: The applicant would be permitted to increase its prices to reflect nonproduct cost increases incurred in producing natural gas liquids and natural gas liquid products at its Garvin County plant.	DXE-1045	Extension of the relief granted in *Oklahoma Natural Gas Co.*, case No. DXE-0073 (decided Feb. 13, 1978) (unreported decision).
Do	Rocky Hill BP, Princeton, N.J. If granted: Rocky Hill BP would not be required to file form EIA-8 (Retail Motor Fuels Service Station Survey).	DEE-1038	Exception to the reporting requirements.
Do	San Joaquin Refining Co., Newport Beach, Calif. If granted: San Joaquin Refining Co. would receive an exception from the provisions of 10 CFR 211.67 with respect to its entitlement purchase obligations for the months of June through November 1978.	DXE-1049	Extension of the relief granted in *San Joaquin Refining Co.*, 1 DOE par. —— (Jan. 30, 1978).
Do	Warrior Asphalt Co. of Alabama, Washington, D.C. If granted: Warrior Asphalt Co. of Alabama would receive an exception from the provisions of 10 CFR 211.67 with respect to its entitlement purchase obligations for the months of June through November 1978.	DXE-1050	Extension of the relief granted in *Warrior Asphalt Co. of Alabama*, 1 DOE par. 81,065 (Jan. 25, 1978).
Do	Young Refining Corp., Douglasville, Ga. If granted: Young Refining Corp. would receive an exception from the provisions of 10 CFR 211.67 with respect to its entitlement purchase obligations for the months of June through November 1978.	DXE-1051	Exception from the entitlements program.

Notices of objection received

[Week of Apr. 14, 1978 through Apr. 21, 1978]

Date	Name and location of applicant	Case No.
Apr. 18, 1978	Prater Co., Albuquerque, N. Mex	FEE-4470
Apr. 20, 1978	Guam Oil & Refining Co., Inc., Dallas, Tex	FEE-4105

Proposed remedial orders

Apr. 18, 1978	Big Bend Truck Plaza, Tallahassee, Fla	DRO-0032
Do	Peterson Oil Co., Inc., Hastings, Nebra	DRO-0033
Do	Phillips Petroleum Co., Bartlesville, Okla	DRO-0034
Do	United Petroleum, Inc., Tampa, Fla	DRO-0035

[FR Doc. 78-12458 Filed 5-5-78; 8:45 am]

[3128-01]

CASES FILED WITH THE OFFICE OF HEARINGS AND APPEALS

Week of April 21 Through April 28, 1978

Notice is hereby given that during the week of April 21 through April 28, 1978, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within 10 days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

MAY 2, 1978.

APPENDIX.—*List of cases received by the Office of Administrative Review*

[Week of Apr. 21 through Apr. 28, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 24, 1978	Courtney F. Foos Coal Co., Inc., Virginia Beach, Va. If granted: Courtney F. Foos Coal Co., Inc., would not be required to file form EIA-6.	DEE-1052	Exception from reporting requirements.
Do	Gulf Oil Corp., Houston, Tex. If granted: Gulf Oil Corp., on behalf of its subsidiary, Caribbean Gulf Refining Co. (CARECO), would receive an exemption from the provisions of 10 CFR 211.67(i)(4) with respect to its entitlement obligations.	DEE-1053	Exception from the entitlements program.
Do	J&W Refining, Inc., Dallas, Tex. If granted: J&W Refining, Inc., would be granted a conference with respect to the establishment of guidelines for consideration of its requests for exception relief from its obligations under the entitlements program.	DSG-0016	Request for special redress.
Do	Mobile Lux Station, Luxora, Ark. If granted: Mobile Lux Station would not be required to file form EIA-8 (retail motor fuels service station survey).	DEE-1054	Exception to the reporting requirements.
Do	Smith's Bottled Gas, Bruceton Mills, W. Va. If granted: Smith's Bottled Gas would be granted an evidentiary hearing with respect to its objection in case No. FEE-4846.	DEH-0004	Motion for evidentiary hearing.
Apr. 26, 1978	Kern County Refinery, Inc., Bakersfield, Calif. If granted: Kern County Refinery, Inc., would receive a stay of a portion of its entitlements obligations computed pursuant to 10 CFR 211.67 pending a final determination on its application for exception.	DEX-0066	Supplemental order.
Do	Lunday-Thagard Oil Co., South Gate, Calif. If granted: Lunday-Thagard Oil Co. would receive a stay of a portion of its entitlements obligation pending final determination on its application for exception.	DEX-0065	Do.
Do	Young Refining Corp., Douglasville, Ga. If granted: Young Refining Corp. would receive a stay of a portion of its entitlements obligation computed pursuant to 10 CFR 211.67 pending a final determination on its application for exception.	DEX-0067	Do.
Apr. 27, 1978	Getty Oil Co., New York, N.Y. If granted: The DOE order issued to Getty Oil Co. on allocation fractions for propane for the central and eastern regions would be rescinded.	DEA-0172	Appeal from DOE order issued on Feb. 24, 1978.

Notices of objection received

[Week of Apr. 21 through Apr. 28, 1978]

Date	Name and location of applicant	Case No.
Apr. 21, 1978	Texas Gas Exploration Co., Houston, Tex	FEE-4460
Apr. 24, 1978	Tosco Corp., Washington, D.C	DXE-0494
Do	Whitco, Inc., Houston, Tex	DXE-0856
Apr. 26, 1978	A. T. Skaer, Denver, Colo	DEE-0408
Do	Gala Gas Co., Eufala, Ala	DEO-0042

Proposed remedial orders

Apr. 24, 1978	Bill's Enco, Wheaton, Ill	DRO-0036
Do	Finch Oil Co., Maysville, Ky	DRO-0037
Do	Propane Gas & Appliance Co., Enterprise, Ala	DRO-0038
Apr. 25, 1978	Don E. Pratt, Hays, Kans	DRO-0039
Apr. 26, 1978	Lakes Gas Co., Forest Lake, Minn	DRO-0040
Do	Norco Oil Co., Cheboygan, Mich	DRO-0041

[FR Doc. 78-12457 Filed 5-5-78; 8:45 am]

[1505-01]

DEPARTMENT OF ENERGY

URANIUM ENRICHMENT SERVICES

Termination Charges

Correction

In FR Doc. 78-10837, appearing at page 17028 in the issue for Friday, April 21, 1978; make the following corrections:

1. On page 17028, second column, tenth line from the bottom, the word "range" should read "usage"; and in the same column, third line from the bottom, "cn" should read "can".

2. On page 17030, first column, sixth line from the bottom, "[ter]minate" should read "[ter]minated"; and in the second column, the signature "WILLIAM S. HEFFELFINER" should read "WILLIAM S. HEFFELFINGER".

[1505-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 889-8]

RHODE ISLAND DRINKING WATER

Approval of State Application for Primary Enforcement Responsibility

Correction

In FR Doc. 78-11697, appearing at page 18611 in the issue for Monday,

May 1, 1978, third column, please transfer the following information from the bottom of the page to page 18617 as it refers to the Small Business Administration and not EPA:

"Dated: April 21, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-11730 Filed 4-28-78; 8:45 am]"

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 908-A]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

MAY 5, 1978.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (See § 309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as otherwise noted Unless specified to the contrary, comments or petitions may be filed concerning radio and Section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. [See § 1.227(b)(3) and 21.30(b) of the Commission's Rules.]

FEDERAL COMMUNICATIONS COMMISSION
WILLIAM J. TRICARICO,
Secretary.

Applications accepted for filing:

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

21192-CD—P-(6)-78 Relay Communications Corporation (KLF579). C. P. for additional facilities to operate on 152.09 MHz at location No. 2: On Route 58, Riverhead; additional repeater facilities to operate on 72.94 MHz at location No. 3: 2.5 miles southwest of Coram; additional repeater facilities to operate on 72.94 MHz and to relocate facilities operating on 152.09 MHz from location No. 3 to a new site described as location No. 4: Near intersection of Abrahams Road and Springs Fireplace Road, East Hampton; additional control facilities to operate on 75.82 MHz and to relocate facilities operating on 152.06 MHz from location No. 2 to a new site described as location No. 5: 145 Griffing Avenue, Riverhead, N.Y.

21206-CD-MP-(2)-78 Hendrix Electronics, Inc. d.b.a. Cal-Com Radio Telephone Service (KLF520). C. P. for additional facilities to operate on 454.050 and 454.325 MHz at location No. 1: Black Mountain, 14 miles East of Glamis, Calif.

21199-CD-P-78 Commercial Radio, Inc. (KJU796). C. P. for additional facilities to operate on 152.15 MHz located at northeast corner of South and Fourth Avenues, Waycross, Ga.

21276-CD-P-78 South Central Rural Telephone Cooperative, Inc. (KWA655). C. P. for additional facilities to operate on 152.72 MHz to be located 2.2 miles northnortheast of Cave City, Ky.

21277-CD-P-78 South Central Rural Telephone Cooperative, Inc. (new). C. P. for a new 1-way signaling station to operate on 158.10 MHz to be located 2.2 miles northnortheast of Cave City, Ky.

21281-CD-ML-78 Airvoice, Inc. (KDS765). Modification of license to change repeater frequency from 459.125 MHz to 459.325 MHz at location No. 1: 2.5 miles east of U.S. Highway 75, on State Highway 112 and 3 miles east of city, Ashburn; and to change control frequency from 454.125 MHz to 459.325 MHz at location No. 2: 2 miles north of U.S. Highway 415 and State Highway 33, near Cordele, Ga.

21282-CD-P-(3)-78 Imperial Communications Corp. (KMA262). C. P. to change antenna system and replace transmitter operating on 152.12 MHz and for additional facilities to operate on 152.06 MHz at location No. 1: Mt. Soledad, San Diego; and for additional facilities to operate on 152.21 MHz at location No. 2: San Miguel Mountain, 13 miles east of San Diego, Calif.

21283-CD-P/ML-78 Answerphone of Lake Worth, Inc. (KWU206). C. P. and license to relocate facilities operating on 43.22 MHz at location No. 1: 1200' south Germantown Road and 700' north Seaboard Coast Railroad, Delray Beach, Fla.

21284-CD-P-78 Answering Service of Trenton, Inc. (KED352). C. P. for additional facilities to operate on 35.58 MHz at a new site described as location No. 4: Approximately 1.2 miles east of Manahawkin, south of Beach Avenue, Stafford township, N.J.

21290-CD-P-78 Telephone Communications, Inc. (KQK731). C. P. for additional facilities to operate on 152.03 MHz located at 203 South Capital Avenue, Lansing, Mich.

21291-CD-TC-(2)-78 Telcom Corp. Consent to transfer of control from Gary T. Cromack, Clayton D. Cromack, transferors to Airphone Co., Inc., transferee. Stations: KUC920 and KWU244, Shelburne, Mass.

21292-CD-MP-78 Carolina Telephone & Telegraph Co. (KDS775). C. P. to relocate facilities operating on 158.10 MHz to be located at 855 Burr Street, Henderson, N.C.

21293-CD-AL-78 William J. Curtin, III, d.b.a. Curtin Call Communications, consent to assignment of license from William J. Curtin, III, d.b.a. Curtin Call Communications, assignor to Roberta Jean Fischer d.b.a. Curtin Call Communications of La-Crosse, assignee. Station: KRS630, La Crosse, Wis.

CORRECTION

21085-CD-P-78 Southwestern Bell Telephone Co., correct call sign to read KAQ648. All other particulars are to remain the same as reported on PN No. 907, dated April 24, 1978.

MAJOR AMENDMENT

20943-CD-P-78 J. M. Blodgett d.b.a. Radio Page Communications, Cape May Court House, New Jersey (KWT885). Amend to change antenna system operating on frequency 35.58 MHz. All other particulars are to remain the same as reported on PN, No. 901, dated 3-13-78.

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

INFORMATIVE

It appears that the following applications may be mutually exclusive and subject to the Commission's Rules regarding ex parte presentations, by reasons of potential electrical interference.

Frequency: 43.58 MHz.

Digital Paging Systems of N.Y., Inc., 20946-CD-P-(4)-78.

Professional Communications, Inc., 20548-CD-P-78.

RURAL RADIO SERVICE

60232-CR-P/L-78 United Telephone Co. of the Northwest (new). C. P. and license for a new central office station to operate on 454.5 MHz located at 1st Street, Lot 8, Mattawa, Wash.

60233-CR-P/L-78 United Telephone Co. of the Northwest (new). C. P. and license for a new rural subscriber station to operate on 459.5 MHz located at 17.5 KM bearing 31.1 degrees fm, Sunnyside, Wash.

POINT-TO-POINT MICROWAVE RADIO SERVICE

OR 2037-CF-TC-(7)-78 Cascade Utilities, Inc., consent to transfer of control from

Duane L. Day and June C. Day, transferors to Day Management Corp., transferee for stations KGG59 near Alder Flat Forest, Camp, Oreg., KGH29 near Estacada, Oreg., KZS52 near Government Camp, Oreg., WCG276 near Scottsburg, Oreg., WCG277 near Elkton, Oreg., WCG278 Elkton, Oreg., and WQR20 Eagle Creek, Oreg.

IL 2035-CF-P-78 Illinois Bell Telephone Co (WAY95), 3.5 miles northeast of Alpha (Henry), Ill. Lat. 41°14'20" N., Long. 90°20'25" W. C.P. to change frequencies 6345.5H to 6315.9H, 6226.9 to 6197.2H, and 6256.5H MHz toward Moline, Ill.; change 6241.7V to 6271.4V, 6360.3V to 6390V, and add 6330.7 MHz toward Victoria, Ill.

IL 2036-CF-P-78 Same (WAY94), 2 miles west of Victoria (Knox), Ill. Lat. 41°02'09" N., Long. 90°08'09" W. C.P. to add frequency 6078.6V MHz toward Alpha, Ill.

KY 2044-CF-P-78 General Telephone Co. of Kentucky (DFC72), 0.25 miles west of 13th and Lexington, Ashland (Boyd), Ky. Lat. 38°28'34" N. Long. 82°39'05" W. C.P. to add a new point of communication on frequency 2112.4H MHz on azimuth 302.0 degrees toward Green Hill, Ky.

KY 2045-CF-P-78 Same (new), Green Hill, 0.3 miles south of Sycamore and Laurel, Greenup, (Greenup), Ky. Lat. 38°34'09" N., Long. 82°50'28" W. C.P. for a new station on frequencies 212.4H MHz on azimuth 121.9 degrees and 2172H MHz on azimuth 328.9 degrees toward Dixie Bluff, Ky.

KY 2046-CF-P-78 Same (new), Dixie Bluff, 0.2 miles north of Kentucky Highway 7, South Shore (Greenup), Ky. Lat. 38°42'58" N., Long. 82°57'15" W.C.P. for a new station on frequency 2122H MHz on azimuth 148.9 degrees toward Green Hill, Ky.

NY 2057-CF-P-78 New York Telephone Co. (KEH92), 158 State Street, Albany (Albany), N.Y. Lat. 42°39'03" N., Long. 73°45'28" W. C.P. to add frequency 6345.5V MHz on azimuth 150.2 degrees toward Austerlitz, N.Y.

NY 2058-CF-P-78 Same (new), 1 mile west of Austerlitz (Columbia), N.Y. Lat. 42°18'25" N., Long. 73°29'35" W. C.P. for a new station on frequencies 6093.5H MHz on azimuth 330.4 degrees toward Albany, N.Y., and 6004.5V MHz on azimuth 257.2 degrees toward Athens, N.Y.

NY 2059-CF-P-78 Same (new), west side of State Highway 385, Athens (Greene), N.Y. Lat. 42°14'46" N., Long. 73°50'59" W. C.P. for a new station on frequency 6256.5H MHz on azimuth 76.9 degrees toward Austerlitz, N.Y.

FL 2063-CF-P-78 General Telephone Co. of Florida (KIL88), 519 Zack Street, Tampa (Hillsborough), Fla. Lat. 27°57'01" N., Long. 82°27'24" W.C.P. to add frequency 6034.2H on azimuth 112.4 degrees toward Lithia, Fla.

NE 1175-CF-P-78 Northwestern Bell Telephone Co. (KAZ45), 118 South 19th Street, Omaha (Douglas), Nebr. Lat. 41°15'32" N., Long. 95°56'28" W. C.P. to increase power on frequencies 6301V and 11685V MHz toward Blair, Nebr.

NE 1176-CF-P-78 Northwestern Bell Telephone Co. (KBL67), 6 miles southwest of Blair (Washington), Nebr. Lat. 41°30'30" N., Long. 96°14'19" W. C.P. to increase power on frequencies 6049V and 10955V MHz toward Oakland, 5960V and 10755V MHz toward Omaha, Nebr.

NE 1177-CF-P-78 Same (KBL66), 3.5 miles south of Oakland (Burt), Nebr. Lat. 41°47'05" N., Long. 96°28'02" W. C.P. to increase power on frequencies 6301H, 11685 MHz toward Wisner, Nebr., and 6330.7V, 11405V MHz toward Blair, Nebr.

NE 1178-CF-P-78 Same (KBL43), 2.8 miles southeast of Wisner (Cuming), Nebr., Lat. 41°58'27" N., Long. 96°51'54" W. C.P. to increase power on frequencies 6049H, 10955H MHz toward Norfolk R1S, Nebr., and 6078.6H, 10755H MHz toward Oakland, Nebr.

NE 1179-CF-P-78 Same (KBK75), Norfolk R1S, 5 miles east of Norfolk (Stanton), Nebr. Lat. 42°01'09" N., Long. 97°19'06" W. C.P. to increase power on frequencies on 6330.7H, 11405H MHz toward Wisner and 6301V, 11685V MHz toward Norfolk, Nebr.

NE 1180-CF-P-78 Same (KYS33), 406 Madison Street, Norfolk (Madison), Nebr. Lat. 42°01'55" N., Long. 97°24'46" W. C.P. to increase power on frequencies 6078.6V and 10755V MHz toward Norfolk R1S, Nebr.

CA 2020-CF-P-78 Pacific Telephone & Telegraph Co. (KMA40), Hollywood, 1429 North Gower Street, Los Angeles (Los Angeles), Calif. Lat. 34°05'49" N., Long. 118°19'18" W. M.P. to increase structure height, move antennas on frequency 5989.7H MHz, and replace transmitters on frequency 6049H MHz toward Beverly Hills, Calif.

CA 2021-CF-P-78 Same (WBB243), 2555 Briarcrest Road, Beverly Hills (Los Angeles), Calif. Lat. 34°07'08" N., Long., 118°23'29" W. M.P. to increase power on frequency 6241.7V MHz and 6301V MHz, replace transmitters and antennas on 6241.7V toward Hollywood, Calif.

IL 2033-CF-P-78 Illinois Bell Telephone Co. (KYS95), 635 18th Street, Rock Island (Rock Island), Ill. Lat. 41°30'20" N., Long. 90°34'27" W. C.P. to change frequencies 6197.2V to 6226.9V, 6315.9V to 6345.5V, 6246.5H to 6286.2V MHz, replace transmitters on 6375.2H MHz and add frequency 6404.8V toward Moline Ill.

IL 2034-CF-P-78 Same (KYS94), 7th Street and 28th Avenue, Moline (Rock Island), Ill. Lat. 41°29'01" N., Long. 90°31'37" W. C.P. to add frequencies 6123.1H MHz toward Rock Island, Ill., and 6004.5H MHz toward Alpha, Ill.; change polarization from H to V on frequencies 6034.2 and 6152.8 MHz toward Rock Island, Ill.

FL 2064-CF-P-78 General Telephone Co. of Florida (WAH395), SR 640 and Browning Road, Lithia (Hillsborough), Fla. Lat. 27°50'49" N., Long. 82°10'33" W. C.P. to add frequencies 6286.2H MHz on azimuth 292.5 degrees toward Tampa, Fla., and 6315.8H MHz on azimuth 63.1 degrees toward Highland City, Fla.

FL 2065-CF-P-78 Same (KIB48), Peterson Road and Highlands Road, Highland City (Polk), Fla. Lat. 27°51'40" N., Long. 81°55'21" W. C.P. to add frequencies 6063.8H MHz on azimuth 243.2 degrees toward Lithia, Fla., and 4050H MHz on azimuth 69.9 degrees toward Winter Haven, Fla.

FL 2066-CF-P-78 Same (KIT47), 200 Avenue B NW., Winter Haven (Polk), Fla. Lat. 28°01'24" N., Long. 81°43'48" W. C.P. to add frequency 4090H MHz on azimuth 250.0 degrees toward Highland City, Fla.

UT 1762-CF-P-78 Western Tele-Communications, Inc. (WBA844), 136 East South Temple, Salt Lake City, Utah. Lat. 40°46'09" N., Long. 111°53'31" W. Construction permit to add 10955.0H MHz toward Nelson Peak, Utah.

TX 2012-CF-P-78 West Texas Microwave Co. (WJL37), North Carol Avenue, 1 block north of Highway 18, Monahans, Tex. Lat. 31°36'22" N., Long. 102°54'01" W. Construction permit to add 6093.5V MHz toward Fort Stockton II, Tex., via power split, on azimuth 181.8 degrees.

TX 2054-CF-MP-78 United WEHCO, Inc. (KEV51), 1 mile southwest of Trees, Tex. Lat. 32°47'04" N., Long. 94°02'51" W. Construction permit to add 6034.2H and 6093.5H MHz toward Bossier City, La., via power split, on azimuth 132.8 degrees.

UT 2068-CF-P-78 Western Tele-Communications, Inc. (new), KUTV, 2195 South 3600 West, Salt Lake City, Utah. Lat. 40°43'31" N., Long. 111°58'34" W. Construction permit for new station—6345.5H MHz toward Salt Lake City, Utah, on azimuth 57.2 degrees.

CORRECTIONS

PA 1949-CF-P-78 Eastern Microwave, Inc. (KGO27), Elk Hill, North Knob, 4 miles north of Dundaff, Pa. Lat. 41°42'54" N., Long. 75°33'42" W. This entry appearing in public notice of April 24, 1978, is corrected to show 6241.7H MHz toward High Knob, Pa., via power split, on azimuth 141.5 degrees.

CA 1960-CF-P-78 Frank K. Spain, doing business as Microwave Service Co. (KNK45), Edom Hill, 4 miles northwest of Thousand Palms, Calif. Lat. 33°51'58" N., Long. 116°26'03" W. This entry, appearing in public notice of April 24, 1978, is corrected to show coordinates as above. All other particulars remain the same as previously reported.

The following application was inadvertently omitted from public notice No. 907 of April 24, 1978:

WI 2019-CF-P-78 Wisconsin Telephone Co., 5 miles southwest of Waukesha CTH X, Waukesha (Waukesha), Wis. Lat. 42°57'34" N., Long. 88°18'02" W. C.P. to add frequency 10975V MHz, move and replace antennas, and increase power on frequencies 10735V, 10895V MHz toward North Prairie, Wis.

[FR Doc. 78-12382 Filed 5-5-78; 8:45 am]

[6712-01]

[Docket No. 21396, File No. TS 2-77, FCC 78-271]

OFFSHORE TELEPHONE CO.

Memorandum Opinion and Order[1]

Adopted: April 20, 1978.

Released: April 27, 1978.

In the matter of petition of Offshore Telephone Co. pursuant to section 201(a) of the Communications Act of 1934, as amended, for establishment of charges for through interstate communications service and division of such charges with South Central Bell Telephone Co. and American Telephone & Telephone Co.

1. We have before us for consideration an order of certification of the presiding Administrative Law Judge (Judge), FCC 77M-2016, released De-

[1] See 42 FR 49498.

cember 1, 1977, requesting clarification of our memorandum opinion and order (designation order) which initiated this proceeding, 66 FCC 2d 184 (1977).

BACKGROUND

2. This proceeding resulted from a formal complaint filed under section 208 of the act, 47 U.S.C. 208, by Offshore Telephone Co. (Offshore). Offshore is engaged in interstate communication, providing "message telephone service" on an end-on-end rate basis to subscribers on drilling rigs and platforms at various points in the Gulf of Mexico.[1] Offshore alleged violations of sections 201(a) and 202(a) of the act, 47 U.S.C. §§ 201(a) and 202(a), by South Central Bell Telephone Co. (SCB), seeking two specific remedies for the alleged violations. 66 FCC 2d at 184-85. First, it requested that we establish charges applicable to a through route, in lieu of the end-on-end method of establishing charges, and order SCB to negotiate a toll-sharing agreement with respect thereto. We have authority to do so pursuant to section 201(a), after there has been opportunity for hearing, upon a finding that such is necessary or desirable in the public interest. Second, Offshore sought damages resulting from SCB's refusal in the past to establish through rates and negotiate a toll-sharing agreement which, Offshore alleges, indicates that SCB has unjustly and unreasonably discriminated against it, vis-a-vis, landline telephone companies in violation of section 202(a) of the act.

3. The presiding Judge states that he seeks clarification because, due to the nature of the complaint and the issues set forth in the designation order, he was unable to determine whether the order designated the matter as a rulemaking proceeding or an adjudication, or both. Whether this is an adjudication or rulemaking will by necessity determine important procedural rules applicable to this proceeding, e.g., the burden of proof and the applicability of the discovery rules. In an attempt to avoid requesting clarification, the Presiding Judge states that he sought comments from the parties to the proceeding. The Chief, Hearing Division of the Common Carrier Bureau, contends that this proceeding is rulemaking, that the rules for discovery do not apply, and that Offshore bears the burden of proof. Offshore argues that this is a rulemaking proceeding and that the discovery rules do not apply, but contends that section 208 of the act places the burden of proof on the carrier, SCB, and the burden of investigation on the Common Carrier Bureau. While both Offshore and the Chief, Hearing Division, agree that the rules for discovery do not apply, both argue that the Presiding Judge may, in the exercise of his or her discretion, provide for informal discovery. Conversely, SCB contends that the proceeding is adjudicatory as a matter of law, and that the burden of proof is to be borne by Offshore and that the rules for discovery are applicable.

DISCUSSION

4. At the outset, we believe it is clear that this proceeding is one of rulemaking as defined in sections 551(4) and 551(5) of the Administrative Procedure Act, 5 U.S.C. 551(4) and 551(5). Section 551(4) provides, in pertinent part, that rulemaking is an "agency process for formulating, amending, or repealing a rule" and section 551(5) provides that a rule is "* * * any agency statement of * * * future effect * * * and includes the approval or prescription of future rates * * * or practice bearing on any of the foregoing." Our designation order expressly specified that the purpose of this proceeding is to determine whether through rates, and a division of revenues therefrom, should be prescribed. Moreover, the complaint, upon which this rulemaking is predicated, alleged that section 201(a) of the Communications Act was violated. By definition under our rules, any proceeding conducted pursuant to section 201(a) is a restricted rulemaking proceeding in the absence of our order to the contrary.[2] Snce we did not otherwise order, this is a restricted rulemaking proceeding.[3]

5. Further, as we noted above, Offshore seeks two kinds of relief, a section 201(a) toll-sharing agreement and damages. Ordinarily, two different types of proceedings would result from the relief sought by Offshore, the first being rulemaking and the second being an adjudication. Since we would be precluded under our ex parte rules from communicating off-the-record with our Common Carrier Bureau in any case of rulemaking which also has adjudicatory issues included, our general practice is to institute entirely separate and distinct docketed proceedings in such cases so that we may avail ourselves of the Bureau's expertise and assistance in deciding rulemaking issues, particularly those which could involve complex ratemaking considerations. That certainly is true of this proceeding, which in many respects appears to be a case of first impression and which may raise important policy considerations within our mandate under section 1 of the Communications Act, 47 U.S.C. § 151.

6. Moreover, it is true that we could have expressly stated in our disignation order, as we did in *Tri City Telephone Co.*, 20 FCC 2d 674 (1969), that part of the Offshore complaint was really a petition for the establishment of through rates and the division of revenues therefrom. We did not do so because of our belief that such statement was unnecessary, since we styled the caption of docket 21396 as a rulemaking proceeding and established the proceeding pursuant to sections 201(a) and 403 of the act. Further, the issues specified in the ordering clause of paragraph 8 of our designation order are clearly rulemaking issues. 66 FCC 2d at 186. While we did fail to specifically order the deferral of the matters relating to the alleged section 202(a) violations, our intent was to take up the rulemaking issues first and defer questions of possible past violations of section 202(a) and damages to a subsequent, separate proceeding.[4]

7. Since we have established that this is to be a rulemaking proceeding looking to whether SCB should grant affirmative relief to Offshore beyond that available in SCB's tariffs, Offshore bears the burden of proof in this proceeding. It is Offshore which seeks the establishment of through rates and a division of revenues. In this regard, section 556(d) of the Administrative Procedure Act, 5 U.S.C. § 556(d), states "except as otherwise provided by statute, the proponent of a rule or order has the burden of proof."

8. We now come to the question of whether our discovery rules are applicable. Section 1.311(a) of our rules, 47 CFR § 1.311(a), provides that discovery is applicable in any case of adjudication as defined by the Administrative Procedure Act. Since this is not an adjudication, our formal discovery procedures are not applicable as a matter of right. See *Discovery Procedures*, 11 FCC 2d 185 187 (1968). However, the presiding Judge may, in the exercise of his discretion, provide for informal discovery. See § 1.243 (e), (f), (i), and (j) of our rules, 47 CFR 1.243 (e), (f),

[1] The rate charged Offshore's customers is comprised of the rate of Offshore to the point of connection and the rate of South Central Bell Telephone Co. (SCB) from that point to the terminal point.

[2] Section 1.1207(a) of our rules provides that "any proceedings conducted pursuant to the provisions of sections 201(a), 204, 205, 213(a), 214(d), 221(c), or 222 of the Communications Act" are rulemaking proceedings. 47 CFR 1.1207(a).

[3] Since this is a restricted rulemaking proceeding, we intended, by citing section 1.1209(d) of our rules in the ordering clause of paragraph 10 of the designation order, that the Chief, Hearing Division, as well as the trial staff, were to be separated. 47 CFR 1.1209(d).

[4] We stated in our designation order that Offshore's claim of discrimination and request for damages was preserved and in no way prejudiced by deferral and we requested that Offshore notify us, at the termination of this proceeding, of its intent to prosecute the same.

(i), and (j). We have ruled in the past that the presiding judge has authority to regulate and order discovery to ensure that the record contains information essential to a rulemaking decision.[5]

9. Accordingly, *It is ordered*, That our designation order is clarified to the extent indicated herein and particularly to make clear that this proceeding is in the nature of a restricted rulemaking.

FEDERAL COMMUNICATIONS COMMISSION
WILLIAN J. TRICARICO,
Secretary.

[FR Doc. 78-12383 Filed 5-5-78; 8:45 am]

[6712-01]

[FCC 78-289; RM-2952]

MOTION PICTURE ASSOCIATION OF AMERICA, INC.

Memorandum Opinion and Order Denying Petition for Rulemaking

Adopted: April 25, 1978.

Released: May 2, 1978.

In the matter of Motion Picture Association of America, Inc., petition for rulemaking to take measures limiting the distribution of television broadcast signals to cable television systems via satellite, RM-2952.

1. The Motion Picture Association of America, Inc. (MPAA), has filed a petition for rulemaking urging the Commission to institute a proceeding "to determine whether restrictions should be placed upon the dissemination of broadcast signals to cable systems via satellites." About 20 comments were filed supporting or opposing the petition. Those supporting the petition were primarily broadcast and program supply interests. Opposition came from cable interests as well as the parties now making use of satellite distribution. MPAA believes that satellite distribution of television signals to cable systems is creating "super stations" and that their existence is contrary to the public interest.

2. MPAA points out that WTCG, Atlanta, Ga., is now widely distributed via satellite. It says that by June 1977 requests to carry WTCG from 672 cable systems serving 1.2 million subscribers had either been granted or were pending. MPAA asserts that these statistics show WTCG is becoming a national "super station." Commenting parties opposing the petition argue that WTCG audience does not approach that of the largest independent stations.[1] Three New York City independents, WOR-TV, WPIX, and WNEW-TV have net weekly circulations of more than double the audience WTCG can now reach both off-the-air and via cable. MPAA apparently defines a super station as one whose audience and/or programming stands so far above conventional stations as to preclude real competition. The additional audience resulting from satellite transmission has not put WTCG in that category and there is no evidence that its programming is in a class by itself. MPAA also refers to station WYAH-TV, Portsmouth, Va., as being carried via satellite. However, thus far that station's signal is not available at all in that manner. Instead a package of programming for local cable origination is being supplied via satellite by the Christian Broadcasting Network, licensee of WYAH-TV.

3. Assuming that such super stations are emerging, MPAA argues that their existence would be contrary to the public interest. The thrust of its concern appears to be "localism." First, MPAA asserts that if a television station has a large national audience it will abandon or neglect its local service obligations. However, MPAA offers no evidence that this is happening or will happen. In any event, a station being distributed via satellite is still required to ascertain the needs and interests of its local community and to program to meet those needs.[2] Should WTCG or any other station fail to meet its obligations in this area, the deficiency can be addressed in the license renewal process.

4. Second, MPAA posits that importation of stations by cable systems via satellite will fractionalize the audience of local stations causing them to lose revenue. This loss could cause the local stations to cut back on local programming, or possibly even go off the air. MPAA bases this on the belief that a super station would provide such high quality programming that most local stations could not compete. Opposing comments point out that use of satellites for distribution has not affected the Commission's cable signal carriage rules. Those rules continue to limit the number of imported signals. As for the high quality program argument, these parties state first that MPAA is proceeding on pure speculation with no substantiating facts. Secondly, they wonder why increased competition would not improve the programming on television as a whole rather than have only negative consequences.

5. We are not persuaded that satellite use endangers local stations. As for the high quality programming which MPAA postulates, it hardly appears to be something the FCC should stifle. We find it hard to accept the argument that a development should be stopped because it might provide too good a service. Furthermore, while competition inherently poses a threat to those competing, we have faith that it would improve programming on the whole and not threaten diminution of service to the public.

6. Petitioner and its commenting supporters place great emphasis on the following language in our decision to delete the cable "leap-frog" rules:

> We will, therefore, continue to monitor the effect of the abolition of the leapfrogging rule with an eye to the effect the use of satellites may have. *If we find that "super-stations" are, in fact, being created, and that their creation is working to the detriment of the public, appropriate corrective measures will be taken.* [Emphasis added.][3]

These parties apparently read the above language to say that if significant satellite use occurs, the Commission will step in. However, it plainly does not say that. Instead the burden of proof lies on those who would restrict service to the public. If it can be shown: (1) That super stations are being created, and (2) that their creation is harmful to the public, then we will step in. But mere allegation without any factual support does not approach the showing necessary. There must be some evidence that the public is being harmed or is likely to be harmed before we can introduce a remedy.

7. One point ignored in MPAA's petition is that the Commission first approved the use of satellite transmission for distributing television signals to cable systems less than 18 months ago. In that case, *Southern Satellite Systems, Inc.*, FCC 76-1149, 62 FCC 2d 153 (1976), we had to make a determination whether this use was in the public interest. In that proceeding we concluded:

> SSS's proposal will permit a more efficient utilization of high capacity domestic satellite facilities * * *. SSS's proposal would also make available a service that cannot be efficiently or economically provided by terrestrial means and would result in an increase in the diversity of cable television programming available to the public [at para. 14].

Nothing unforeseen has happened since that decision and no new facts have been presented. It appears that Southern Satellite is successfully doing what it proposed and what we determined was a good thing. MPAA is

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[5] *American Telephone & Telegraph (MPL)*, Docket 20814, 62 FCC 2d 35, 37 (1976); see also *Mebane Home Telephone*, Docket 20476, FCC 75M-1675, released October 1, 1975.

[1] And, of course, many stations with network affiliations have much larger potential audience than WTCG.

[2] For further information on those obligations, see *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 36 FR 4092 (1971) and *First Report and Order in Docket 19715*, 57 FCC 2d 418, 41 FR 1372 (1976).

[3] *Report and Order in Docket 20487*, FCC 75-1409, 57 FCC 2d 625, 645 (1975), recons. denied, FCC 76-521, 59 FCC 2d 934 (1976).

urging that this success is reason to revoke or alter our authorization. Finally, it is significant that the Certificate granted to Southern Satellite was limited to 5 years for the express purpose of reevaluating this form of service in light of our experience at that time. We feel MPAA's request for evaluation now is premature.

Accordingly, *It is ordered*, That the petition for rulemaking (RM-2952) is denied.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-12396 Filed 5-5-78; 8:45 am]

[6712-01]

[FCC 78-267]

USED 23-CHANNEL CB RADIOS

Order Denying Petition To Extend or Waive Marketing Cut-Off Date

AGENCY: Federal Communications Commission.

ACTION: Denies petition to extend or waive marketing cut-off date.

SUMMARY: Order denies petitions to extend or waive January 1, 1978, marketing cut-off date for used 23-channel CB radios.

EFFECTIVE DATE: Nonapplicable.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Herman Garlan, Office of Chief Engineer, FCC, Washington, D.C. 20554, 202-632-7095.

Adopted: April 20, 1978.

Released: May 3, 1978.

By the Commission: Commissioner White dissenting and issuing a statement.

Order. In the matter of petitions to extend the January 1, 1978, marketing cut-off date for used 23-channel CB radios.

1. The Commission has before it two petitions to waive §§ 15.59(g) and 95.641(c)(6) of our rules which specify tht marketing of 23-channel CB radios[1] shall be terminated not later than January 1, 1978. The petitions request waiver for used 23-channel CB radios. See appendix.

2. One petition was filed on January 30, 1978, by Davidson Supply Co. and was put on public notice January 31, 1978 (FCC No. 96402). The second petition was filed on February 3, 1978, by the Colorado Pawnbrokers Association and was put on public notice on February 14, 1978 (FCC No. 96960). In response to these public notices a comment was received on February 21, 1978, from Pathcom, Inc., supporting the waiver requested in the petitions. A letter was also received on February 7 1978, from Capitol Loans which asks for special permission to dispose of the CB radios that Capitol has on hand which Capitol is holding as pledges on loans.[2]

3. The Commission established the new technical standards for CB radios and also established cut-off dates for the manufacture and marketing of 23-channel CB radios in several actions in 1976.[3][4] The Commission has also on three separate occasions[5][6][7] considered the question of waiver of the January 1, 1978, marketing cut-off date. With the exception of hand held CB radios[6] which presented exceptional circumstances, the Commission has denied all requests for waiver and has consistently maintained that marketing of 23-channel CB radios must be terminated not later than January 1, 1978. Our most recent denial (Order of November 9, 1978) was affirmed on review by the court.[8]

THE DAVIDSON PETITION

4. Davidson explains that it sells CB radios at wholesale and at retail and that in 1977 it had sold 17,129 40-channel units and 89,933 23-channel units (Davidson exhibit A). In connection with its established policy of guaranteeing customer satisfaction, Davidson states that it accepts return of defective equipment and either refunds the customer's money or exchanges the returned merchandise for new equipment from stock. In the case of dealers, Davidson accepts return of defective merchandise and issues a credit for such equipment. Davidson then ships such returned equipment to the manufacturer for repair. Upon repair the equipment is returned to Davidson and is sold as used equipment. In a set of exhibits attached to its petition Davidson shows that during 1977, 490 40-channel units and 1,741 23-channel units were returned to the manufacturer for repair, and that as of December 31, 1977, 140 40-channel and 309 23-channel units had not yet been returned to Davidson. To allow it to continue its practice of exchanging and repairing defective 23-channel CB radios, Davidson requests the Commission either to waive the January 1, 1978, marketing cut-off date or to construe the term "marketing" not to apply to such used equipment.

THE COLORADO PAWNBROKERS PETITION

5. The Colorado Pawnbrokers Association represents 39 licensed pawnbrokers in the State of Colorado which constitutes 80 percent of the pawnbrokers in that State. Under Colorado law, the petitioner explains, no pawnbroker shall sell any pledge in his possession until 6 months after maturity of the loan or until the pledgor has been given 10 days notice by mail of the time within which the pledge shall be redeemed. The petition explains that data collected from the Association members shows that they hold 749 23-channel CB radios under pledge which are not yet available to be sold. They also hold 376 23-channel CB units that have become available for sale since January 1, 1978.

6. The petition explains further that experience indicates that about 80 percent of the pawned CB radios would

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[1] As used herein, the term 23-channel CB radio refers to a CB radio (transceiver) that does not meet the new technical specifications that were adopted by the Commission on July 27, 1976, and went into effect on Sept. 10, 1976. All CB radios manufactured to meet these new standards have a 40-channel capability.

[2] A petition from the Heilig-Meyers Co. and a comment from the Texas Pawnbrokers Association were received too late to permit detailed treatment in this order. Heilig-Meyers, a merchandiser in several States on the East Coast seeks the same relief sought by Davidson. The Texas Pawnbrokers filing and supplement is essentially a petition asking for the same relief sought by the Colorado Pawnbrokers Association.

[3] Revised technical standards for CB transmitters and the transmitter part of a CB radio (transceiver) were adopted in docket 20120, 2d report and order adopted July 27, 1976; released July 29, 1976 (41 FR 32678; 60 FCC 2d 762) and memorandum opinion and order adopted Oct. 18, 1978, released Oct. 28, 1976 (41 FR 47445; 62 FCC 2d 646). These revised technical standards went into effect on Sept. 10, 1976.

[4] Technical standards were imposed on CB receivers and the receiver part of a CB radio (transceiver) in docket 20746, 1st report and order adopted July 27, 1976, released Aug. 4, 1976 (41 FR 32590; 60 FCC 2d 687) and memorandum opinion and order adopted Oct. 18, 1976, released Oct. 28, 1976 (41 FR 47442; 62 FCC 2d 623). These new receiver standards went into effect on Sept. 10, 1976.

[5] "In the matter of manufacture and sale of 23-channel class D citizens band equipment that was type accepted prior to Sept. 10, 1976." Order adopted Aug. 1, 1977, denies request to establish a cut-off for importation and reaffirms the Jan. 1, 1978, marketing cut-off date, FCC 77-562. Simultaneously, the Commission on Aug. 1, 1977, issued a public notice (FCC 77-563) cautioning and reminding manufacturers and importers that manufacture of 23-channel CB radios must be terminated not later than Aug. 1, 1977, and marketing not later than Jan. 1, 1978.

[6] "In the matter of petitions to extend the sales cut-off date for certain CB radios." Order adopted Aug. 24, 1977, extended the sales cut-off date to hand held CB radios (as defined in par. 12 of the order) and denied an extension of sales cut-off for all other (23-channel) CB radios, FCC 77-586; 66 FCC 2d 139.

[7] "In the matter of petitions to extend the Jan. 1, 1978, sales cut-off date for 23-channel CB radios and CB receiver/converters." Order adopted Nov. 9, 1977, denied the petitions, FCC 77-768; 66 FCC 2d.

[8] *Arthur Fulmer, Inc.*, v. *FCC*, D.C. Cir. No. 77-2064.

ordinarily be redeemed by their owners. However, it appears that public notice of the FCC ruling[9] is causing a substantial reduction in the number of redemptions. Estimating that $20 was advanced on each CB radio that was pawned, petitioner states that the units now or soon to be available for sale represent an out of pocket loss of $22,500.

7. Petitioner explains that the advance of money by a pawnbroker is not a typical loan. Such a loan has no maturity date and continues indefinitely as long as interest is paid and the pledge is not redeemed. The pawnbroker has no control over the maturity of the loan and is powerless to require new security. If the borrower chooses not to repay his loan and abandons the pledged property, the borrower has no further obligation to the pawnbroker and the pawnbroker has no further recourse against the borrower. The pawnbroker's only way to recover the money he loaned is to sell the unredeemed pledge.

8. Referring to the Commission's order of November 9, 1977,[10] petitioner alleges that the reference to "adequate notice" in paragraph 9 of that order cannot appropriately be applied to pawnbrokers, since they do not fit the description of parties "involved in CB marketing" and that granting the requested waiver would not constitute unwarranted favoritism on behalf of pawnbrokers in view of the unique characteristics of the pawnbroking business and the legal restrictions under which pawnbrokers operate.

The Pathcom Filing

9. Pathcom urges the Commission to grant the waiver requested by Davidson and extend this waiver to all the retailers who follow the business practice described by Davidson in its petition. Pathcom points out that in many States, a retailer is required to refund the cost of inoperable equipment and in almost all States a consumer seeking redress from small claims court action effectively force the retailer to refund money.

10. Pathcom recognizes that the intent of the "new type of regulation"[11] was to stop the continued proliferation of interference causing devices. It argues, however, that a used CB radio is already on the air and as such its repair does not constitute a new potential source for interference. Finally, Pathcom argues, that denial of the instant petitions will work an additional hardship particularly on the smaller retailers who, having suffered by not being able to sell after January 1, 1978,[12] the new 23-channel CB radios they had in stock, will be compelled to take further losses if they are not permitted to sell as used equipment the repaired 23-channel CB radios that had been taken back from their customers under warranty.

Commission Decision

11. Let us turn first to Davidson. The business practice of taking back inoperable equipment, returning such equipment to the manufacturer for repair and subsequently selling this equipment as "used equipment" is precisely the business practice described by Montgomery Ward in its petition that was considered and denied in the Commission's order of August 24, 1977.[13]

12. Davidson is silent on the interference potential of the used 23-channel CB radios it is seeking to sell after January 1, 1978. However, Pathcom in supporting Davidson, argues that the used equipment is already on the air and therefore does not constitute a new potential source of interference. The Commission cannot agree with Pathcom. A transaction in which Davidson (or for that matter any other retailer) takes back a defective piece of equipment, has it repaired and returns the repaired equipment to the purchaser, is not a sale that is covered by our marketing cut-off regulation. Similarly, the exchange of a working unit for a defective unit would not be considered marketing. This interpretation is set out in paragraph 10 of our public notice of January 30, 1978: "Marketing of 23-channel CB radios" (FCC No. 96235).[14]

13. However, where the dealer takes back a defective 23-channel unit, has it repaired and then seeks to sell it as used equipment to a new purchaser, such a transaction is considered marketing and is prohibited after January 1, 1978. This last transaction does constitute a new potential source of interference, Pathcom's assertion to the contrary, and allowing the sale of such a piece of used equipment would fly in the face of the Commission's decision to remove interference capable equipment from the market place at the earliest possible time.

14. The Colorado Pawnbrokers argue that they are caught in a bind between the Commission's regulation that prohibits the sale of an abandoned pledge (a 23-channel CB radio) to redeem the loan that had been made thereon and the Colorado State law that prohibited the timely sale of such pledge. Moreover, they argue that the pawnbrokers did not receive adequate notice. The pawnbrokers argue that they do not fit the description of parties "involved in CB marketing" and cannot be expected to be knowledgeable of trade publications in which the ban against marketing of pre-September 10, 1976 was discussed.

15. The Commission is sympathetic to the pawnbroker's dilemma but cannot accept the argument that it is due to lack of notice concerning the marketing cut-off date. Our Orders of August 1976[15] which established this cut-off date were properly publicized in the Federal Register in accordance with established Federal rulemaking procedures[16] and parties affected are charged with notice.[17] Moreover, as we pointed out in paragraph 9 of our Order of November 9, 1977,[18] these rules were widely publicized not only in trade publications but also in publications of general circulations.

16. While it may be technically correct that pawnbrokers are not "involved in CB marketing" as alleged, it would appear that a pawnbroker must have a good knowledge of the market value of a CB radio (or of any other item that he accepts as security for a loan) if he is to succeed in his business. It can be expected therefore that a pawnbroker would take whatever measures are available under the law to protect his loan. In this connection we note that the 1973 Colorado Revised Statutes 12-56-112 set out a procedure for the pawnbroker to terminate a loan.

17. The Colorado Pawnbrokers' and Davidson's arguments for relief appeared to be largely based on financial hardship and economic loss. We have not been persuaded by similar arguments in our consideration of earlier requests for waiver or extension of the marketing cut-off date.[19] Nor are we persuaded in this instance. In setting the marketing cut-off date at January

[9] The petition does not indicate which FCC ruling is referred to. It may be assumed that the term FCC ruling encompasses the several FCC orders that established the new technical specifications and the manufacturing and marketing cut-off dates for 23-channel CB radios, and the orders that denied waiver or extension of the marketing cut-off date.

[10] See footnote 7 above.

[11] Presumably the Commission's new technical standards for CB radios and the manufacturing and marketing cut-off dates for 23-channel CB radios.

[12] See footnote 7 above.

[13] See footnote 6 above.

[14] Item 10 of this public notice states:

If a customer purchases a 23-channel radio before Jan. 1, 1978, and the radio is defective, can the dealer exchange the radio or repair it?

Both of these actions would be allowable. Repairs to the radios are not prohibited. In the case of an exchange program to supply the customer with a working radio in place of a defective unit, this would not be considered marketing by the Commission as the customer would still be in possession of the same type of unit that was originally purchased before the cut-off date. However, the dealer would not be permitted to sell the unit he took in exchange.

[15] See footnotes 3 and 4 above.

[16] 5 U.S.C. 552 (D) and (E).

[17] 44 U.S.C. 1507.

[18] See footnote 7 above.

[19] See footnotes 5, 6 and 7 above.

1, 1978 we recognized that some hardship and financial loss would occur. We must reiterate that:

> The dates chosen [August 1, 1977 for termination of manufacture and January 1, 1978 for termination of sales] represented however what was and is believed to be a reasonable compromise between the alternatives of providing the lowest level of interference potential on the one hand and a *total loss or waste of untold dollars of inventory of components, parts and finished sets on the other.* (italic supplied.) [20]

18. The need to reduce the potential interference to television, the land mobile service, and others is overriding. Neither of the petitioners had challenged this need. The loss asserted to be sustained by petitioners is no greater and in many cases less than that claimed by earlier petitioners who were denied. The Commission must insist therefore that the January 1, 1978 marketing cut-off date for 23-channel CB radios must stand.

19. In view of the above the petitions by Davidson, Heilig-Meyers and the Colorado Pawnbrokers are denied.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

APPENDIX

PETITION FOR WAIVER

Davidson Supply Co., petition filed January 30, 1978, by attorney Kenneth R. Keller of Tuggle, Duggins, Meschan, Thornton & Elrod, P.A., 228 West Market Street, Greensboro, N.C. 27402.

Colorado Pawnbrokers Association, petition filed February 3, 1978, by attorney Wilton W. Cogswell III. Mining Exchange Building, Colorado Springs, Colo. 80903.

Heilig-Meyers Co., petition filed March 24, 1978, by attorney Larry M. Goodall of McGuire, Woods & Battle, Ross Building, Richmond, Va. 23219

Texas Pawnbrokers Association, comment filed February 24, 1978, with supplement on April 7, 1978, by attorney Stephen A. Goldberg of Hogan & Hartson, 815 Connecticut Avenue NW., Washington, D.C. 20006. (These filings are labeled comment and supplement to comments, but for all practical purposes, these filings constitute a petition to exempt CB radios held by members of the Texas Pawnbrokers Association from the January 1, 1978, marketing cut-off date.)

COMMENTS

Pathcom, Inc., 24049 South Frampton Avenue, Harbor City, Calif. 90710; letter dated February 14, 1978.

Capitol Loans, 774 Poplar Avenue, Memphis, Tenn. 38105; letter dated February 4, 1978 (although not strictly a comment in this proceeding, this letter essentially asks for the same relief requested by the Colorado Pawnbrokers Association).

[20] FCC Order of Aug. 1, 1978 at Paragraph 5. See footnote 5 above.

DISSENTING STATEMENT OF COMMISSIONER MARGITA E. WHITE

IN RE ORDER DENYING EXTENSION OF MARKETING CUT-OFF DATE FOR USED CB RADIOS

I dissent to the majority's decision to deny an extension of the marketing cut-off date for used 23-channel CB radios for the same reasons that I stated in my dissent to the original order denying an extension of the marketing cut-off date for new CB equipment. See my dissenting statement *In the Matter of Petitions To Extend the January 1, 1978, Sales Cut-Off Date for 23-Channel CB Radios and CB Receiver/Converters,* FCC 77-768 (released November 30, 1977).

[FR Doc. 78-12397 Filed 5-5-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

GERING NATIONAL CO.

Formation of Bank Holding Company

Gering National Co., Gering, Nebr., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding by acquiring 80 percent or more of the voting shares of Gering National Bank & Trust Co., Gering, Nebr. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Gering National Co., Gering, Nebr., has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Pioneer Saving Co., Gering, Nebr. Notice of the application was published on April 6, 1978, in the Gering Courier, a newspaper circulated in Gering, Nebr.

Applicant states that the proposed subsidiary would engage in the activities of operating an industrial loan and investment company pursuant to the laws of the State of Nebraska, including the issuance of paid-up certificates of indebtedness, installment certificates of indebtedness and making single payment demand loans, consumer loans, commercial loans and first and second mortgages on real estate; and acting as insurance agent for the sale of single and joint decreasing term credit life insurance and credit accident and health insurance and level term credit life insurance on single payment demand notes. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 1, 1978.

Board of Governors of the Federal Reserve System, May 2, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-12403 Filed 5-5-78; 8:45 am]

[6210-01]

NEW HAMPTON BANCSHARES, INC.

Formation of Bank Holding Company

New Hampton Bancshares, Inc., New Hampton, Mo., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842 (a)(1)) to become a bank holding company by acquiring 87.2 percent of the voting shares (including directors' qualifying shares) of First State Bank of New Hampton, New Hampton, Mo. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than May 31, 1978.

Board of Governors of the Federal Reserve System, May 1, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-12404 Filed 5-5-78; 8:45 am]

[3510-25]

FOREIGN-TRADE ZONES BOARD

[Docket No. 4-78]

FOREIGN-TRADE ZONE—ORLANDO, FLA.

Application and Public Hearing

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Orlando Aviation Authority (Aviation Authority), a public agency of the City of Orlando, requesting a grant of authority for the establishment of a general-purpose foreign-trade zone in the City of Orlando, within the Orlando Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 1, 1978. The applicant is authorized to make this proposal under Chapter 75-464, Laws of Florida, Acts of 1975.

The proposal calls for the establishment of a 201-acre general-purpose foreign-trade zone at the Orlando International Airport, about 8 miles south of downtown Orlando. Owned by the City of Orlando, the proposed zone area has been assigned to the Aviation Authority for development. At the outset of zone operations, the Aviation Authority plans to use an existing warehouse (Building 437), located at Florida Road and 9th Street. Other parcels within the 201-acre site will be activated as the need arises. The airport site is also served by highway and rail.

The application contains economic data and information concerning the need for zone services in the Orlando area. Several firms have indicated their intention to use the zone for storage, testing, repackaging, exhibition, and distribution activities. Among the initial zone users are firms involved in a variety of products, including sporting goods, electronic equipment, agricultural equipment, scientific instruments, graphic supplies, and automotive and aircraft parts.

In accordance with the Board's regulations, an Examiners Committee has been appointed to investigate the application and report thereon to the Board. The Committee consists of: Hugh J. Dolan (Chairman), Office of the Secretary, U.S. Department of Commerce, 14th and E Streets NW., Washington, D.C. 20230; James R. Cahill, Director, Inspection and Control Division, U.S. Customs Service, Region IV, 7370 Northwest 36th Street, Miami, Fla. 33166; and Col. Donald A. Wisdom, District Engineer, U.S. Army Engineer District, Jacksonville, P.O. Box 4970, Jacksonville, Fla. 32201.

In connection with its investigation of the proposal, the Examiners Committee will hold a public hearing on June 7, 1978, beginning at 9 a.m., in the City Council Chambers, 2nd Floor, City Hall, 400 S. Orange Avenue, Orlando, Fla. The purpose of the hearing is to help inform interested persons about the proposal, to provide an opportunity for their expression of views, and to obtain information useful to the examiners.

Interested persons or their representatives are invited to present their views at the hearing. Such person should, by May 31, notify the Board's Executive Secretary, in writing at the address below, of their desire to be heard. In lieu of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the Examiners Committee, care of the Executive Secretary, at any time from the date of this notice through July 7, 1978. The submission of evidence is not desired during the posthearing period unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director, U.S. Customs Service, 9955 Benford Road, Orlando, Fla. 32309.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 6886-B, 14th and E Streets NW., Washington, D.C. 20230.

Dated: May 3, 1978.

JOHN J. DA PONTE, Jr.
Executive Secretary.

[FR Doc. 78-12435 Filed 5-5-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6987-A, AA-6987-B and AA-6987-D]

ALASKA

Alaska Native Claims Selection

On January 27, 1974, Yak-Tat Kwaan Inc., for the Native village of Yakutat, filed selection application AA-6987-A; on December 12, 1974, filed selection application AA-6987-B; and on December 16, 1974, filed selection application AA-6987-D under the provisions of section 16(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 706; 43 U.S.C. 1601, 1615 (Supp. V, 1975)), for the surface estate of lands located in the Tongass National Forest in the Yakutat area.

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement 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, selected pursuant to section 16(b), aggregating approximately 20,003 acres is considered proper for acquisition by Yak-Tat Kwaan Inc. and is hereby approved for conveyance pursuant to section 14(b) of the Alaska Native Claims Settlement Act:

U.S. Survey 3589, Alaska, Lots 1, 2, 3, 4, 5, 5-A, 8, 9 and 10, situated on the southerly shore of Monti Bay, approximately ½ mile southwest of Yakutat.

U.S. Survey 3590, Alaska, Lots D, J, K, L, L-1 and N, situated on the southerly shore of Monti Bay, approximately ½ mile south of Yakutat.

Containing 9.46 acres.

COPPER RIVER MERIDIAN, ALASKA (SURVEYED)

T. 27 S., R. 33 E.,
- Sec. 1, Lots 1 to 20, inclusive, W½SW¼, all;
- Sec. 2, Lots 1 to 4, inclusive, SE¼SE¼, all;
- Sec. 10, Lots 1, 2 and 3, SE¼SE¼, all;
- Sec. 11, Lots 1 to 8, inclusive, NE¼NE¼, SW¼, SW¼SE¼, all;
- Sec. 12, Lots 1 to 21, inclusive, all;
- Sec. 13, Lots 1 to 7, inclusive, all;
- Sec. 14, Lots 1 to 11, inclusive, all;
- Sec. 15, Lots 1 to 5, inclusive, E½NE¼, all;
- Sec. 22, Lot 1, all;
- Sec. 23, Lots 1 to 5, inclusive, Lot 6 excluding AA-12392, request for designation as section 3(e), Alaska Native Claims Settlement Act, for 1 acre, Khantaak Lighthouse;
- Sec. 24, Lots 1 and 2;
- Sec. 26, Lots 1 to 4, inclusive;
- Sec. 27, Lots 4 to 7, inclusive; S½SW¼;
- Sec. 34, Lots 1 to 8, inclusive, NE¼, E½NW¼, N½SE¼;
- Sec. 35,, Lots 1 to 5, inclusive, S½NE¼, NW¼NE¼, NW¼, N½S½;
- Sec. 36, Lots 1 to 8, inclusive, S½NW¼, N½SW¼.

Containing 3,763.25 acres.

T. 27 S., R. 34 E.,
- Sec. 1, Lots 1 to 4, inclusive, E½, NE¼SW¼, S½SW¼, all;
- Sec. 2, Lots 1, 2 and 3, SE¼SE¼, all;
- Sec. 4, Lots 1, 2 and 3, all;
- Sec. 5, Lots 1 to 13, inclusive, NW¼NE¼, SE¼SE¼, all;
- Sec. 6, Lots 1 to 15, inclusive, all;
- Sec. 7, Lots 1 to 12, inclusive, all;
- Sec. 8, Lots 1 to 11, inclusive, N½NE¼, all;
- Sec. 9, Lots 1 to 5, inclusive, all;
- Sec. 10, Lots 1 to 5, inclusive, SE¼NE¼, E½SE¼, all;
- Sec. 11, Lot 1, E½, NE¼NW¼, S½NW¼, SW¼, all;
- Secs. 12, 13 and 14, all;
- Sec. 15, Lots 1 to 6, inclusive, NE¼NE¼, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼, all;
- Sec. 16, Lots 1, 2 and 3, all;
- Sec. 17, Lots 1 to 10, inclusive, W½E½, SE¼NW¼, E½SW¼, all;
- Sec. 18, Lots 1 to 8, inclusive;
- Sec. 19, Lot 1;

Sec. 20, Lots 1 to 6, inclusive, NE¼, E½NW¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 21, Lots 1, 2 and 4, SW¼NW¼, W½SW¼, E½SE¼;
Sec. 22, Lots 1 and 2, E½, S½NW¼, SW¼, all;
Secs. 23 to 28, inclusive, all;
Sec. 29, Lots 1 to 4, inclusive, E½E½;
Sec. 31, Lots 1 to 4, inclusive;
Sec. 32, Lots 1 to 6, inclusive, E½NE¼;
Sec. 33, Lot 1, N½, N½SW¼, SE¼SW¼, SE¼;
Secs. 34, 35 and 36, all.

Containing 14,312.99 acres.

Aggregating 18,085.70 acres.

COPPER RIVER MERIDIAN, ALASKA
(UNSURVEYED)

T. 27 S., R. 33 E.,
Sec. 24, unsurveyed portion of island adjoining U.S. Survey 400.

Containing approximately 5 acres.

T. 26 S., R. 34 E.,
Secs. 13 and 23 (fractional), all;
Sec. 25, W½NE¼, NW¼, N½SW¼, SW¼SW¼;
Secs. 26 and 35 (fractional), all;
Sec. 36, W½NW¼, S½SW¼ (fractional), SE¼.

Containing approximately 1,005 acres.

T. 28 S., R. 34 E.,
Sec. 6, N½.

Containing approximately 316 acres.

T. 27 S., R. 35 E.,
Sec. 17, NW¼NE¼, NW¼;
Sec. 18, NE¼, SW¼, N½SE¼.

Containing approximately 592 acres.

Aggregating approximately 1,918 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. As to the lands in T. 27 S., R. 34 E., Copper River Meridian, the highway easement deed, AA-12407, dated February 16, 1967, issued by the Bureau of Public Roads, U.S. Department of Commerce with the concurrence of the U.S. Forest Service for a right-of-way for a Federal Aid Highway. Act of August 27, 1958, as amended, 23 U.S.C. 317;

2. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accuring 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(f) (Supp. V, 1975)); and

3. 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(b) (Supp. V, 1975)), the following public easements, referenced by easement identification number (EIN) on the easement maps in case file AA-6987-EE, are reserved to the United States and subject to further regulation thereby:

a. (EIN 1 C5, D1, D9) 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 3 C1, C3, D1, D3, G) An easement sixty (60) feet in width for an existing road from Yakutat to the west boundary of section 27, T. 27 S., R. 33 E., Copper River Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

c. (EIN 26 C) 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 27 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 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 therin, 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 of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1970))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee or grantee to the complete enjoyment of all rights, previleges and benefits thereby granted to him;

3. The following third-party interests, if valid, created and identified by the U.S. Forest Service 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. Cemetery, City of Yakutat, special use permit of June 30, 1934 in section 23, T. 27 S., R. 33 E.

b. Sanitary Landfill, City of Yakutat, special use permit of May 20, 1977 in section 29, T. 27 S., R. 34 E.

4. Requirements of section 22(k) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 715; 43 U.S.C. 1601, 1621(k) (Supp, V, 1975)), that, as to the portion of the above-described lands located within the boundaries of a national forest (a) until December 18, 1976, the sale of any timber from such lands is subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and (b) until December 18, 1983, such lands shall be managed under the principles of sustained yield and under managememt practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands;

5. Requirements of section 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (Supp, V, 1975)), that the grantee hereunder convey those portions, if any , of the lands hereinabove granted, as are prescribed in said section; and

6. The terms and conditions of the agreement dated March 2, 1978, between the Secretary of the Interior, Yak-Tat Kwaan Inc., and Sealaska Corp. A copy of the agreement shall be attached to and become a part of the coveyance document and shall be recorded therewith. A copy of the agreement is located in the Bureu of Land Management easement case file for Yak-Tat Kwaan Inc., serialized AA-6987-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.

The United States waives administration of oil and gas leases AA-4875 and AA-4941 as well as all of the land embraced therein approved for interim conveyance, and the leases will be transferred to Sealaska Corportation when conveyance is issued.

COPPER RIVER MERIDIAN, ALASKA

AA-4875

T. 27 S., R. 34 E.,
Secs. 20, 21, 28, all;
Sec. 29, E½.

AA-4941

T. 27 S., R. 34 E.,
Secs. 35 and 36, all.

Pursuant to section 16(b) of the Alaska Native Claims Settlement Act, Yak-Tat Kwaan Inc. is entitled to 23,040 acres of land; by this decision approximately 20,003 acres have been approved for conveyance. Patent to the surface estate of the surveyed land herein approved will be issued when this decision becomes final; interim conveyance will be issued for the unsurveyed land. Conveyance of the remaining entitlement to Yak-Tat

Kwaan Inc. will be made at a later date. Pursuant to section 14(f) of the Alaska Native Claims Settlement Act, conveyance of the subsurface estate of the lands described above shall be issued to Sealaska Corp. when conveyance is granted to Yak-Tat Kwaan Incorporated for the surface estate, 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 and in the Southeast Alaska Empire (Juneau). 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 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 June 7, 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.

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.

ROBERT E. SORENSON,
Chief, Branch of Lands, and Minerals Operations.

[FR Doc. 78-12394 Filed 5-5-78; 8:45 am]

[4310-84]

[AA-6987-A, AA-6987-B, AA-6987-C and AA-6987-D]

ALASKA

Alaska Native Claims Selection

On January 27, 1974, Yak-Tat Kwaan Inc., for the Native village of Yakutat, filed selection application AA-6987-A; on December 12, 1974, filed selection applications AA-6987-B and AA-6987-C; and on December 14, 1974, filed selection application AA-6987-D under the provisions of section 16(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 706; 43 U.S.C. 1601, 1615 (Supp. v, 1975)), for the surface estate of lands located in the Tongass National Forest in the Yakutat area.

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do no 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, selected pursuant to section 16(b), aggregating approximately 1,866 acres, is considered proper for acquisition by Yak-Tat Kwaan Inc., and is hereby approved for interim conveyance pursuant to section 14(b) of the Alaska Native Claims Settlement Act:

U.S. Survey 2134, Alaska, Yakutat Native Cemetary, situated about three-fourths of a mile east of the entrance of Monti Bay.

Containing 2.10 acres.

COPPER RIVER MERIDIAN, ALASKA (SURVEYED)

T. 27 S., R. 33 E.,
Sec. 20, Lot 1, all;
Sec. 21, Lots 1, 2 and 3, all;
Sec. 27, Lots 1, 2 and 3;
Sec. 28, Lots 1 to 17, inclusive, NW¼NE¼, NW¼, all;
Sec. 29, Lots 1 to 7, inclusive, all;
Sec. 32, Lots 1 and 2, Lot 3 excluding AA-15156, request for designation as sec. 3(e), Alaska Native Claims Settlement Act, Lot 4 excluding Native allotment application AA-6594;
Sec. 33, Lots 1 to 5 and 8 to 14, inclusive, Lots 6, 7, 15 and 16 excluding Native allotment application AA-6594.

Containing 1,079.70 acres.

T. 27 S., R. 34 E.,
Sec. 21, Lot 3 excluding AA-15143, request for designation as sec. 3(e), Alaska Native Claims Settlement Act, S½NE¼, SE¼NW¼, E½SW¼, W½SE¼.

Containing 298 acres.
Aggregating 1,379.80 acres.

COPPER RIVER MERIDIAN, ALASKA (UNSURVEYED)

T.26 S., R. 34 E.,
Sec. 24 (fractinal), all;
Sec. 25, E½NE¼.

Containing approximately 335 acres.

T. 27 S., R. 35 E.,
Sec. 18, NW¼.

Containing approximately 152 acres.
Aggregating approximately 487 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. As to the lands in T. 27 S., R. 34 E., Copper River Meridian, the highway easement deed, AA-12407, dated February 16, 1967, issued by the Bureau of Public Roads, U.S. Department of Commerce with the concurrence of the U.S. Forest Service for a right-of-way for a Federal Aid Highway under the act of August 27, 1958, as amended, 23 U.S.C. 317;

2. 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(f)) (Supp. V, 1975); and

3. 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(b) (Supp. V, 1975)), the following public easements, referenced by easement identification number (EIN) on the easement maps in case file AA-6987-EE, are reserved to the United States and subject to further regulation thereby:

a. (EIN 1 C5, D1, D9) 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 3 C1, C3, D1, D3, G) An easement sixty (60) feet in width for an existing road from Yakutat westerly around the Phipps Peninsula via The Ankau and Ocean Cape, then southeasterly along the shore of the Gulf of Alaska for access to public lands and waters. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

c. (EIN 3a C1, C3, D1, D3, G) An easement for an existing access trail, fifty (50) feet in width from road easement EIN 3 C1, C3, D1, D3, G at the bridge crossing the Ankau north and westerly by the cemetery to Point Carrew and around to intersect road easement EIN 3 C1, C3, D1, D3, G. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

d. (EIN 7 G) An easement sixty (60) feet in width for an existing road from junction with road in section 21, T. 27 S., R. 34 E., Copper River Meridian (covered by highway easement deed AA-12407), northerly to a 2-acre log transfer site on Sawmill Cove. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

e. (EIN 10 G) An easement one hundred (100) feet in width for a proposed road from the existing road in section 18, T. 27 S., R. 35 E., Copper River Meridian, northeasterly to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

f. (EIN 11 D9) 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 Humpback Creek through section 24 and the northeast ¼ of section 25, T. 26 S., R. 34 E., Copper River Meridian. Purpose is to provide for public use of waters having highly significant present recreational use.

g. (EIN 23 C4) A one (1) acre site easement upland of and parallel to the mean high tide line in section 28, T. 27 S., R. 33 E., Copper River Meridian, on the north side of the The Ankau near the bridge. The site is for vehicle use.

h. (EIN 26 C) 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.

i. (EIN 27 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 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 of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1970))), 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. The following third-party interests, if valid, created and identified by the U.S. Forest Service 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. Cemetery, City of Yakutat, special use permit of November 2, 1963, in section 27, T. 27 S., R. 33 E.

b. Residence, R. Edwards, special use permit of November 2, 1970, in section 29, T. 27 S., R. 33 E.

c. Telephone right-of-way, U.S. Coast Guard, special use permit of January 16, 1970, across sections 29, 32, and 33, T. 27 S., R. 33 E.

4. Requirements of section 22(k) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 715; 43 U.S.C. 1601, 1621(k) (Supp. V, 1975)), that, as to the portion of the above-described lands located within the boundaries of a national forest (a) until December 18, 1976, the sale of any timber from such lands is subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and (b) until December 18, 1983, such lands shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands;

5. Requirements of section 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section; and

6. The terms and conditions of the agreement dated March 2, 1978, between the Secretary of the Interior, Yak-Tat Kwaan Inc. and Sealaska Corp. 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 Yak-Tat Kwaan Inc., serialized AA-6987-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.

The United States waives administration of oil and gas leases AA-4875 and AA-4941 as well as all of the land embraced therein approved for interim conveyance, and the leases will be transferred to Sealaska Corp. when conveyance is issued.

COPPER RIVER MERIDIAN, ALASKA

AA-4875

T. 27 S., R. 34 E.,
Secs. 20, 21, 28, all;
Sec. 29, E½.

AA-4941

T. 27 S., R. 34 E.,
Secs. 35 and 36, all.

Pursuant to section 16(b) of the Alaska Claims Settlement Act, Yak-Tat Kwaan Inc. is intitled to 23,040 acres of land; by a previous decision on July 1, 1974, patent was issued to Yak-Tat Kwaan Inc. for 1.0086 acres. By a recent decision, 18,085.70 acres of surveyed land and approximately 1,918 acres of unsurveyed land were approved for conveyance. Together with the lands herein approved, the total of lands conveyed or approved for conveyance is 19,466.5086 acres of surveyed land and 2,405 acres of unsurveyed land.

Patent to the subsurface estate of the surveyed land herein approved will be issued when this decision becomes final; interim conveyance will be issued for the unsurveyed land and the lands requiring additional survey. Conveyance of the remaining entitlement to Yak-Tat Kwaan Inc. will be at a later date. Pursuant to section 14(f) of the Alaska Native Claims Settlement Act, conveyance of the subsurface estate of the lands described above shall be issued to Sealaska Corp. when conveyance is granted to Yak-Tat Kwaan Inc. for the surface estate, and shall be subject to the same conditions as the surface conveyance.

Kardy Lake and The Ankau, by reason of tidal influence, are the only 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 and in the Southeast Alaska Empire (Juneau). 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 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 June 7, 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.

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.

ROBERT E. SORENSON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-12395 Filed 5-5-78; 8:45 am]

[4310-84]

[Colorado 24563-24564]

COLORADO STATE OFFICE

Order Providing for Opening of Public Lands and National Forest Lands

APRIL 28, 1978.

1. The Federal Power Commission issued orders September 29, 1976 (FR 41, pages 44464 and 44465) vacating in their entirety withdrawals for power development Project 1093 and transmission line Project 1261, affecting portions of the following described public lands and National Forest lands to the extent they were occupied by a diversion-conduit development and by power transmission lines:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 1 N., R. 71 W.,
Sec. 7, NW¼SW¼, S½SW¼;
Sec. 8, SW¼NE¼, SE¼NW¼, N½SW¼, SW¼SW¼;
Sec. 17, W½NW¼, NW¼SW¼;
Sec. 18, N½NE¼, SE¼NE¼, NE¼NW¼, E½SE¼;
Sec. 19, E½E½, NW¼NE¼, E½NW¼, SW¼NW¼, NW¼SW¼.
T. 1 N., R. 72 W.,
Sec. 12, W½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 13, SE¼SW¼, SW¼SE¼;
Sec. 24, N½NE¼, SE¼NE¼.

ROOSEVELT NATIONAL FOREST

T. 1 N., R. 72 W.,
Sec. 1, SE¼SW¼, and SW¼SE¼;
Sec. 25, W½W½;
Sec. 34, SE¼SW¼ and SE¼;
Sec. 35, NE¼, NE¼NW¼, S½NW¼, and NE¼SE¼;
Sec. 36, SE¼NW¼ and N½SW¼.
T. 1 S., R. 72 W.,
Sec. 4, NE¼NE¼, NE¼SW¼, SW¼SW¼, and NW¼SE¼.
T. 7 N., R. 73 W.,
Sec. 20, NE¼SW¼.

The acres described aggregate approximately 75 acres in Boulder and Larimer Counties.

2. At 10 a.m. on June 5, 1978, the portions of the public lands affected shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable laws. All valid applications received at or prior to 10 a.m. on June 5, 1978, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on June 5, 1978, the national Forest lands shall be open to such forms of appropriation as may by law be made of National Forest land.

Inquiries concerning the lands should be addressed to the undersigned, Bureau of Land Management, 700 Colorado State Bank Building, 1600 Broadway, Denver, Colo. 80202.

RODNEY A. ROBERTS,
Leader, Canon City-Grand Junction Team, Branch of Adjudication

[FR Doc. 78-12374 Filed 5-5-78; 8:45 am]

[4310-84]

[Colorado 8879]

COLORADO

Termination of Proposed Withdrawal and Reservation of Lands

APRIL 28, 1978.

Notice of a Forest Service, U.S. Department of Agriculture application, Colorado 8879, for withdrawal and reservation of lands for public purposes, was published as FR Doc. 69-6905, on pages 9291-9292 of the issue of June 12, 1969. It was republished as FR Doc. 77-37087 on pages 65280-65281 of the issue of December 30, 1977. The applicant agency has canceled its application insofar as it affects the following described lands:

SIXTH PRINCIPAL MERIDIAN, WHITE RIVER NATIONAL FOREST

AQUA FRIA LAKE RECREATION AREA

T. 8 N., R. 82 W.,
Sec. 29: SW¼SW¼;
Sec. 30: S½SE¼, SE¼SW¼;
Sec. 31: N½NE¼NE¼; and
Sec. 32: N½NE¼NE¼.

The areas described aggregate approximately 200 acres.

Therefore, pursuant to the regulations contained in 43 CFR Part 2311, such lands, at 10 a.m., on May 30, 1978, will be relieved of the segregation effect of the above-mentioned application.

ANDREW W. HEARD, Jr.,
Leader, Craig Team, Branch of Adjudication.

[FR Doc. 78-12375 Filed 5-5-78; 8:45 am]

[4310-84]

[Colorado 0126472]

COLORADO

Termination of Proposed Withdrawals and Reservation of Lands

APRIL 28, 1978.

Notice of a U.S. Forest Service application C-0126472 for withdrawal and reservation of land for public recreation sites was published as FR Doc. 65-12676, on page 14691 of the issue for Thursday, November 25, 1965. The notice of proposed withdrawal was republished as FR Doc. 78-114 on page 1011 of the issue for January 5, 1978. The applicant agency has canceled its application insofar as it affects the following described lands.

RIO GRANDE NATIONAL FOREST

NEW MEXICO PRINCIPAL MERIDIAN

Salthouse Campground

T. 44 N., R. 2 E.,
Sec. 12, SW¼SW¼ and SW¼SE¼SW¼;
Sec. 13, NW¼NE¼NW¼, and NE¼NW¼NW¼.

Therefore, pursuant to the regulations contained in 43 CFR, Part 2310, such lands will be relieved of the segregative effect of the above-mentioned application 30 days from the date of this notice.

EDWARD KOETEEUW,
Acting Leader, Canon City-Grand Junction Team, Branch of Adjudication.

[FR Doc. 78-12376 Filed 5-5-78; 8:45 am]

[4310-84]

[Colorado 0122327]

COLORADO

Termination of Proposed Withdrawal and Reservation of Lands

APRIL 28, 1978.

Notice of a Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, U.S. Department of the Interior application, Colorado 0122327, for withdrawal and reservation of lands for wildlife management purposes was published as FR Doc. 64-3935, on page 5405 of the issue of April 22, 1964. The applicant agency has canceled its application in its entirety. The lands involved are described as:

NEW MEXICO PRINCIPAL MERIDIAN

T. 49 N., R. 3 W.,
Sec. 2, Lot 4, SW¼NW¼ and W½SW¼;
Sec. 3, N½SW¼ and SE¼SW¼;
Sec. 6, Lot 4;
Sec. 7, Lots 2, 3, 4, N½NE¼ and E½W½;
Sec. 8, N½N½, SE¼NW¼, and NE¼SW¼;
Sec. 10, NE¼NW¼ and S½NW¼;
Sec. 11, W½W½;
Sec. 14, W½;
Sec. 15, NE¼ and S½;
Sec. 16, All;
Sec. 17, S½NE¼;
Sec. 18, Lots 1, 2, 3, 4, and E½W½;
Sec. 19, Lots 1, 2, 3, 4, S½NE¼, E½W½, and SE¼;
Sec. 20, N½S½;
Sec. 21, N½, SW¼, N½SE¼, and SE¼SE¼;
Sec. 22, N½NE¼, NW¼, W½SW¼, and SE¼SE¼;
Sec. 23, W½;
Sec. 26, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
Sec. 27, E½NE¼ and NE¼SE¼.
T. 49 N., R. 4 W.,
Sec. 13, E½, NW¼, and E½SW¼;
Sec. 14, SE¼SE¼;
Sec. 23, NE¼, NE¼NW¼, SE¼SW¼, and SE¼;
Sec. 24, NE¼, E½NW¼, and S½.

The above area aggregates 7,085.98 acres.

Therefore, pursuant to the regulations contained in 43 CFR, Part 2311,

such lands, at 10 a.m., on June 5, 1978, will be relieved of the segregative effect of the above-mentioned application.

MERRILL G. ANDERSON,
Leader, Montrose Team,
Branch of Adjudication.

[FR Doc. 78-12377 Filed 5-5-78; 8:45 am]

[4310-84]

[Colorado 014334]

COLORADO

Termination of Proposed Withdrawal and Reservation of Lands

APRIL 28, 1978.

Notice of a Fish and Wildlife Service, U.S. Department of the Interior application, Colorado 014334, for withdrawal and reservation of lands for wildlife management purposes was published as FR Doc. 60-6020, on page 6147 of the issue of June 30, 1960. The applicant agency has canceled its application in its entirety. The lands involved are described as follows:

NEW MEXICO PRINCIPAL MERIDIAN

T. 49 N., R. 3 W.,
Sec. 2, Lot 4, SW¼NW¼ and W½SW¼;
Sec. 3, N½SW¼ and SE¼SW¼;
Sec. 6, Lot 4;
Sec. 7, Lots 2, 3, 4, N½NE¼ and E½W½;
Sec. 8, N½N½, SE¼NW¼, and NE¼SW¼;
Sec. 10, NE¼NW¼ and S½NW¼;
Sec. 11, W½W½;
Sec. 14, W½;
Sec. 15, NE¼ and S½;
Sec. 16, All;
Sec. 17, S½NE¼;
Sec. 18, Lots 1, 2, 3, 4, and E½W½;
Sec. 19, Lots 1, 2, 3, 4, S½NE¼, E½W½, and SE¼;
Sec. 20, S½;
Sec. 21, N½, SW¼, N½SE¼, and SE¼SE¼;
Sec. 22, N½NE¼, NW¼, W½SW¼, and SE¼SE¼;
Sec. 23, W½;
Sec. 25, SW¼SW¼;
Sec. 26, W½NE¼, W½, and SE¼;
Sec. 27, E½E½, NW¼NW¼, and SE¼SW¼;
Sec. 28, N½NW¼;
Sec. 29, N½N½ and SW¼NW¼;
Sec. 30, Lots 1, 2, NE¼ and E½NW¼;
Sec. 34, S½NE¼ and SW¼NW¼;
Sec. 35, N½NE¼, NE¼NW¼, and S½NW¼;
Sec. 36, NW¼NW¼.
T. 49 N., R. 4 W.,
Sec. 13, E½ and E½W½;
Sec. 24, N½NE¼, SE¼NE¼, and SE¼;
Sec. 25, NE¼, SE¼NW¼, and S½.

The areas described above aggregate 8,286.99 acres.

Therefore, pursuant to the regulations contained in 43 CFR, Part 2311, such lands, at 10 a.m., on June 5, 1978, will be relieved of the segregative effect of the above-mentioned application.

MERRILL G. ANDERSON,
Leader, Montrose Team,
Branch of Adjudication.

[FR Doc. 78-12378 Filed 5-5-78; 8:45 am]

[4310-84]

Office of the Secretary

[Order No. 3020]

REVOCATION OF SECRETARIAL ORDER 2987

Section 1. *Revocation.* (a) Secretarial Order 2987, dated March 3, 1976, provides for the reservation of easements for the transportation of Federal energy, fuel, and natural resources pursuant to the Secretary's discretionary authority in section 17(b) of the Alaska Native Claims Settlement Act (ANCSA).

(b) In an effort to speed the conveyance of lands to Alaska Natives, a thorough review of the Department's ANCSA policies was initiated, including policies concerning easement reservations. The Department's new policy, as stated in a memorandum and decision document dated March 3, 1978, provides that no transportation and utility corridors are to be reserved in conveyances to Alaska Natives as required by Secretarial Order 2987. To implement this policy, it was stated that Secretarial Order 2987 was to be revoked. In accordance with the Department's new easement policy, Secretarial Order 2987 is hereby revoked.

Section 2. *Effective Date.* This order is effective immediately.

Dated: May 1, 1978.

JAMES A. JOSEPH,
Acting Secretary
of the Interior.

[FR Doc. 78-12393 Filed 5-5-78; 8:45 am]

[4410-01]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 77-40]

MAXIMO R. SARMIENTO, M.D.

Hearing

Notice is hereby given that on November 17, 1977, the Drug Enforcement Administration, Department of Justice, issued to Maximo R. Sarmiento, M.D., San Francisco, Calif., an order to show cause as to why his DEA certificate of registration, AS5589203, should not be revoked.

Thirty days having elapsed since the said order to show cause was received by the respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10 a.m. on Tuesday, May 23, 1978, in the U.S. Tax Court Courtroom, Room 2021, Federal Building and Courthouse, 450 Golden Gate Avenue, San Francisco, Calif.

Dated: May 2, 1978.

PETER B. BENSINGER,
Administrator,
Drug Enforcement Administration.

[FR Doc. 78-12452 Filed 5-5-78; 8:45 am]

[4410-01]

[Docket No. 78-4]

STEPHEN J. GREGA, M.D.

Hearing

Notice is hereby given that on February 9, 1978, the Drug Enforcement Administration, Department of Justice, issued to Stephen J. Grega, M.D., Seattle, Wash., and Redmond, Wash., an order to show cause as to why his application for registration executed April 28, 1977, and his two applications for registration executed August 5, 1977, should not be denied.

Thirty days having elapsed since the said order to show cause was received by the respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10 a.m. on Wednesday, May 24, 1978, in the U.S. Tax Court Courtroom, Room 2021, Federal Building and Courthouse, 450 Golden Gate Avenue, San Francisco, Calif.

Dated: May 2, 1978.

PETER B. BENSINGER,
Administrator,
Drug Enforcement Administration.

[FR Doc. 78-12453 Filed 5-5-78; 8:45 am]

[7532-01]

NATIONAL COMMISSION ON NEIGHBORHOODS

MEETING

ACTION: Notice of meeting.

SUMMARY: This notice, required under the Federal Advisory Committee Act (5 U.S.C., Appendix I), announces a public meeting.

TIME AND DATE: Friday, May 19, 1978; Saturday, May 20, 1978. Time of meeting to be announced as soon as known.

PLACE: Los Angeles, Calif. Details to be published as soon as known.

AGENDA: Details to be published as soon as known.

STATUS: Open to the public.

CONTACT PERSON:

Ms. Frances Phipps, Deputy Director, telephone No. 202-632-5200.

JONATHAN STEIN,
Administrative Officer.

[FR Doc 78-12406 Filed 5-5-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-592; STN 50-593]

ARIZONA PUBLIC SERVICE CO., ET AL. (PALO VERDE NUCLEAR GENERATING STATION, UNITS 4 AND 5)

Hearing on Application for Construction Permits

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection," and Part 2, "Rules of Practice," notice is hereby given that a hearing will be held before an Atomic Safety and Licensing Board, to consider the application filed under the Act by the Arizona Public Service Co., on behalf of itself, and 10 joint applicants—Southern California Edison Co., El Paso Electric Co., San Diego Gas and Electric Co., Nevada Power Co., Department of Water and Power of the city of Los Angeles, city of Anaheim, Calif., city of Burbank, Calif., city of Glendale, Calif., city of Pasadena, Calif., city of Riverside, Calif. (the applicants), for construction permits for two pressurized water nuclear reactors designated as the Palo Verde Nuclear Generating Station, Units 4 and 5 (the facilities), each of which will be designed for operation at a core power level of 3,800 thermal megawatts, with a net electrical output of approximately 1,307 megawatts. The proposed facilities are to be located in Maricopa County, Ariz., about 36 miles west of Phoenix.

The hearing, which will be scheduled to begin in the vicinity of the site of the proposed facilities, will be conducted by an Atomic Safety and Licensing Board (Board), which has been designated by the Chairman of the Atomic Safety and Licensing Board Panel. The Board consists of Gustave A. Linenberger, Dr. Quentin J. Stober and Robert M. Lazo, Esq., Chairman.

Pursuant to 10 CFR 2.785, an Atomic Safety and Licensing Appeal Board will exercise the authority and the review function which would otherwise be exercised and performed by the Commission. Notice as to the membership of the Appeal Board will be published in the FEDERAL REGISTER at a later date.

Upon completion by the Commission's staff of a favorable safety evaluation of the application and an environmental review, and upon receipt of a report by the Advisory Committee on Reactor Safeguards, the Director of Nuclear Reactor Regulation will consider making affirmative findings on Items 1-3, a negative finding on Item 4, and an affirmative finding on Item 5 specified below as a basis for the issuance of construction permits to the applicants. In the event that a separate hearing is held with respect to a limited work authorization, Item 6 below describes the matters for consideration.

ISSUES PURSUANT TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. Whether in accordance with the provisions of 10 CFR 50.35(a):

(a) The applicants have described the proposed design of the facilities including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

(b) Such further technical or design information as may be required to complete the safety analysis and which can reasonably be left for later consideration, will be supplied in the final safety analysis report;

(c) Safety features or components, if any, which require research and development have been described by the applicants and the applicants have identified, and there will be conducted a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

(d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facilities, and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facilities can be constructed and operated at the proposed location without undue risk to the health and safety of the public.

2. Whether Arizona Public Service Co. is technically qualified to design and construct the proposed facilities;

3. Whether the applicants are financially qualified to design and construct the proposed facilities; and

4. Whether the issuance of permits for construction of the facilities will be inimical to the common defense and security or to the health and safety of the public.

ISSUE PURSUANT TO NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA)

5. Whether, in accordance with the requirements of 10 CFR Part 51, the construction permits should be issued as proposed.

ISSUES PURSUANT TO 10 CFR 2.761A (LIMITED WORK AUTHORIZATION)

6. Pursuant to 10 CFR 2.761a, a separate hearing and partial decision by the board on issues pursuant to NEPA and general site suitability and certain other possible issues may be held and issued prior to and separate from the hearing and decision on other issues. In the event the Board, after the hearing, makes favorable findings on such issues, the Director of Nuclear Reactor Regulation may, pursuant to 10 CFR 50.10(e) authorize the applicants to conduct certain onsite work entirely at their own risk prior to completion of the remainder of the proceeding.

In the event that this proceeding is not a contested proceeding, as defined by 10 CFR 1.3(n), the Board will determine without conducting a de novo evaluation of the application: (1) whether the application and the record of the proceeding contain sufficient information, the review of the application by the Commission's staff has been adequate to support the proposed findings to be made by the Director of Nuclear Reactor Regulation on Items 1-4 above, and to support, insofar as the Commission's licensing requirements under the Act are concerned, the issuance of the construction permits proposed by the Director of Nuclear Reactor Regulation; and (2) whether the NEPA review conducted by the Commission's staff has been adequate.

In the event that this proceeding becomes a contested proceeding, the Board will consider and initially decide, as issues in this proceeding, Items 1-5 above as a basis for determining whether construction permits should be issued to the applicants.

With respect to the Commission's responsibilities under NEPA, and regardless of whether the proceeding is contested or uncontested, the Board will, in accordance with § 51.52(c) of 10 CFR Part 51: (1) determine whether the requirements of section 102(2)(A), (C), and (E) of NEPA and Part 51 have been complied with in this proceeding; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding for the permits with a view to determining the appropriate action to be taken; and (3) determine after weighing the environmental, economic, technical and other benefits against environmental and other costs, and considering available alternatives whether construction permits should be issued, denied, or appropriately conditioned to protect environmental values.

The Board will convene a special prehearing conference of the parties to the proceeding and persons who have filed petitions for leave to inter-

vene, or their counsel, to be held within sixty (60) days after the notice of hearing is published or at such other time as the Board deems appropriate, for the purpose of dealing with the matters specified in 10 CFR 2.751a.

The Board will convene a prehearing conference of the parties, or their counsel, to be held subsequent to any required special prehearing conference, and within sixty (60) days after discovery has been completed or at such other time as the Board may specify, for the purpose of dealing with the matters specified in 10 CFR 2.752.

The Board will set the time and place for any special prehearing conference, prehearing conference and evidentiary hearing, and the respective notices will be published in the FEDERAL REGISTER.

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715. A person making a limited appearance may make an oral or written statement on the record. They do not become a party, but may state their interest and raise questions which they would like to have answered to the extent that the questions are within the scope of Items 1-5 above. Limited appearances will be permitted at the time of the hearing at the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by July 6, 1978. The presiding Atomic Safety and Licensing Board may make further provision with respect to limited appearances subsequently during the course of this proceeding.

Any person whose interest may be affected by the proceeding, who wishes to participate as a party in the proceeding must file a written petition under oath or affirmation for leave to intervene in accordance with the provisions of 10 CFR 2.714. A petition for leave to intervene shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and any other contentions of the petitioner including the facts and reasons why intervention should be permitted, with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. Any such petition shall be accompained by a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene and setting forth with particularity both the facts pertaining to petitioner's interest and the basis for petitioner's contentions with regard to each aspect on which intervention is desired. A petition that sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A petition for leave to intervene must be filed with the Secretary of the Commission and others as specified below by June 6, 1978. A petition for leave to intervene which is not timely will not be entertained absent a determination by the Board that the petitioner, in addition to the matters specified in 10 CFR 2.714(d), has made a substantial showing of good cause for failure to file on time. The reasons for the tardiness in filing a petition for leave to intervene, as well as the factors specified in 10 CFR 2.714(a)(1)-(4) shall be considered in making a determination whether there has been a substantial showing of good cause by the petitioner.

Pursuant to 10 CFR 1.101, the application has been filed without the Environmental Report required by 10 CFR 50.30(f). Under 10 CFR 2.101, the omitted material should be filed by the applicant within six months. In view of this, any person who wishes to participate as a party in this proceeding pursuant to 10 CFR 2.714 need not set forth in any petition for leave to intervene required to be filed by June 6, 1978 any contentions related to the omitted material. A deadline for filing of other contentions relating to matters covered in the omitted material will be established by the Board subsequent to acceptance of the Environmental Report for a detailed review. In all other aspects, said petition must meet the requirements of 10 CFR 2.714, namely, setting forth the interest of the petitioner in the proceeding, facts and reasons why intervention should be permitted, and a general statement as to the subject matter in the proceeding as to which intervention is sought. Subsequent to the submission of the omitted material, a supplemental notice of hearing will be published which will provide an opportunity for interested members of the public to intervene in this proceeding with regard to any issues raised by the Applicant's Environmental Report.

An answer to this notice, pursuant to the provisions of 10 CFR 2.705 must be filed by the applicant by May 30, 1978.

Papers required to be filed in this proceeding shall be filed by mail or telegram addressed to the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be filed by delivery to the Commission's public document room, 1717 H Street NW., Washington, D.C. 20555. Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR 2.708, an original and twenty (20) conformed copies of each such paper with the Commission. A copy of any petition for intervention should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and to Arthur C. Gehr, Esq., Snell and Wilmer, 3100 Valley Center, Phoenix, Ariz., 85073, attorney for the applicants. Any questions or requests for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

For further details, see the application for construction permits dated March 1, 1978 which, along with any amendments or supplements thereto, is or will be available as noted above for public inspection at the Commission's public document room, 1717 H Street NW., Washington, D.C., between the hours of 8:30 a.m. and 5 p.m. on weekdays. Copies of those documents will also be available at the Phoenix Public Library, Science and Industry Section, 12 East McDonnell Road, Phoenix, Ariz. 85004 for inspection my members of the public between the hours of 10 a.m. to 9 p.m. Monday through Thursday, 10 a.m. to 6 p.m. Friday, 9 a.m. to 6 p.m. Saturday and 2 p.m. to 6 p.m. on Sunday. As they become available, a copy of the safety evaluation report by the Commission's staff, the draft and final environmental statements, the report of the Advisory Committee on Reactor Safeguards (ACRS), the proposed construction permits, the transcripts of the prehearing conferences and of the hearing, and other relevant documents, will also be available at the above locations. Copies of the proposed construction permits and the ACRS report may be obtained, when available, by request to the Director, Division of Project Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of the Commission's staff safety evaluation report and final environmental statement, when available, may be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Va. 22161.

Dated at Washington, D.C. this 28th day of April 1978.

UNITED STATES NUCLEAR REGULATORY COMMISSION,
SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-12177 Filed 5-5-78; 8:45 am]

[7590-01]

[Docket Nos. STN 50-592 and STN 50-593]

ARIZONA PUBLIC SERVICE CO., ET AL.

(PALO VERDE NUCLEAR GENERATING STATION, UNITS 4 AND 5)

Receipt of Antitrust Information and Application for Construction Permits and Operating Licenses: Time for Submission of Views on Antitrust Matters

Arizona Public Service Co. on behalf of itself and ten joit applicants—Southern California Edison Co., El Paso Electric Co., San Diego Gas and Electric Co., Nevada Power Co., Department of Water and Power of the city of Los Angeles, city of Anaheim, city of Burbank, city of Glendale, city of Pasadena, and city of Riverside, Calif.—(the applicants), pursuant to section 103 of the Atomic Energy Act of 1954, as amended, filed portions of their application. These parts which consist of the Safety Analysis Report, general and financial information were accepted for docketing on March 31, 1978 and are assigned Docket Nos. STN 50-592 and STN 50-593.

In addition a portion of the application filed contains the information requested by the Attorney General for the purpose of an antitrust review of the application as set forth in 10 CFR Part 50, Appendix L, and was also accepted for docketing and is assigned Docket Nos. STN 50-592-A and STN 50-593-A.

The application is for authorization to construct and operate two pressurized water reactors designated as the Palo Verde Nuclear Generating Station, Units 4 and 5 on the applicants' site in Maricopa County, Ariz. The reactor is designed for operation at a core power level of 3800 mega watts thermal, with an equivalent net electrical output of approximately 1307 megawatts.

A Notice of Hearing setting forth the radiological issues to be considered during the review is being published separately. A date for submitting petitions for leave to intervene on radiological issues is set forth in the Notice of Hearing.

Any person who wishes to have his views on the antitrust matters of the application 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 July 6, 1978. The request should be filed in connection with Docket Nos. STN 50-592-A and STN 50-593-A.

The Environmental Report was tendered but initially rejected and is expected to be resubmitted on or before September 1, 1978. A separate notice of receipt and availability for this remaining portion will be published at that time. A deadline for filing of other contentions relating to matters covered in the omitted material will be established by the Board subsequent to acceptance of the Environmental Report for a detailed review.

After the Environmental Report has been received and analyzed by the Commission's Director of Nuclear Reactor Regulation or his designee, a draft environmental statement will be prepared by the Commission's staff. Upon preparation of the draft environmental statement, the Commission will cause to be published in the FEDERAL REGISTER a notice of availability of the draft statement, requesting comments from interested persons on the draft statement. Upon consideration of comments submitted with respect to the draft environmental statement, the staff will prepare a final environmental statement, the availability of which will be noticed in the FEDERAL REGISTER.

Copies of the individual portions of the application, as noted above are available for public examination and copying for a fee at the Commission's public document room, 1717 H Street NW., Washington, D.C. 20555, and at the Phoenix Public Library, Science and Industry Section, 12 East McDowell Road, Phoenix, Ariz. 85004.

Dated at Bethesda, Md., this 20th day of April 1978.

FOR THE NUCLEAR REGULATORY COMMISSION,

JOHN F. STOLZ,
Chief Light Water Reactors Branch No. 1, Division of Project Management.

[FR Doc. 78-12176 Filed 5-5-78; 8:45 am]

[7590-01]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON FLUID/HYDRAULIC DYNAMIC EFFECTS

Meeting

The ACRS Subcommittee on Fluid/Hydraulic Dynamic Effects will hold a meeting on May 23, 1978 at the Royal Court Inn, 1750 S. Elmhurst Road, Des Plaines, Ill., to discuss the status items related to the Mark I, II and III Containment Systems.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977, page 56972, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

TUESDAY, MAY 23, 1978

8:30 a.m. Until the Conclusion of Business

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the General Electric Co., and their consultants, pertinent to this review.

The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Andrew L. Bates, telephone 202-634-1919 between 8:15 a.m. and 5 p.m., e.d.t.

Dated: May 3, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-12547 Filed 5-5-78; 8:45 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

Lists 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 April 27, 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 thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service, application for employment by a (G-4) spouse or unmarried son or daughter of an official of an international organization, I-566, on occasion, 800 (G-4) nonimmigrants, Clearance Office, 395-3772.

REVISIONS

DEPARTMENT OF DEFENSE

Defense Civil Preparedness Agency:
- Local Civil Preparedness Annual Program Paper, DCPA-744-A, annually, local civil preparedness directors/coordinators, 5,055 responses, 42,750 hours, National Security Division 395-4734.
- DCPA Program Status Report, semiannually, State Civil Preparedness Offices, 55 responses, 1,375 hours, National Security Division 395-4734.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Management:
- Modernization Work Program, HUD-52994, on occasion, public housing agencies, 600 responses, 1,800 hours, Budget Review Division, 395-4775.
- Actual Modernization Cost Certification, HUD-53001, on occasion, public housing agencies, 300 responses, 300 hours, Budget Review Division, 395-4775.
- Modernization Program Budget, HUD-42990, on occasion, public housing agencies, 750 responses, 6,000 hours, Budget Review Division, 395-4775.

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration, Survey of Correctional Facilities: Population, Capacity and Adequacy (Site Visits), LEAA-3400, single-time, Federal, State corrections agencies and criminal justice officials, 952 responses, 1,744 hours, Laverne V. Collins, 395-3214.

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service, Eggs Broken—Dried Under Federal Inspection, PY-240, monthly, 2,100 responses, 1,050 hours, Ellett, C.A., 395-6132.

Animal and Plant Health Inspection Service:
- Application for Approval of Quarantine Facility for Birds, VS 17-11, on occasion, 15 responses, 4 hours, Clearance Office, 395-3772.
- Regulations—Importation of Animals and Poultry, and Animal Poultry Products, on occasion, Clearance Office, 395-3772.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration Application for Exemption (of Drugs) for Manufacturing Use, FD-1674, on occasion, antibiotic manufacturers, 100 responses, 50 hours, Richard Eisinger, 395-3214.

DEPARTMENT OF LABOR

Employment and Training Administration, National Longitudian Surveys, Survey of Work Experience of Mature Men—1976 Questionnaire and Advance Letter, LGT-181, LGT-183, annually, men aged 45-59 in 1966, 5,000 responses, 5,000 hours, Office of Federal Statistical Policy and Standard 673-7959.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-12462 Filed 5-5-78; 8:45 am]

[3110-01]

CLEARANCE OF REPORTS

Lists 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 April 28, 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 list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Management, Modernization Quarterly Progress Report, HUD-52995, quarterly, 2,400 public housing agencies, Budget Review Division, 395-4775.

ENVIRONMENTAL PROTECTION AGENCY

CFC Annual Report, annually, 70 chemical firms, Ellett, C. A., 395-6132.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education:
- Lenders Application for Contract of Federal Loan Insurance, OE 621-1, on occasion, 522 institutions of higher education, Clearance Office, 395-3772.
- Student Application for a Heal Loan, OE 621-2, annually, 9,520 health professions students, Laverne V. Collins, 395-3214.
- Heal Program Loan Transfer Statement, OE 621-3, on occasion, 2,080 institutes of higher education, Clearance Office, 395-3772.
- State Plan for Education Information Centers, OE-610, annually, 56 State Agencies or IHE's, Laverne V. Collins, 395-3214.

REVISIONS

NATIONAL MEDIATION BOARD

Application for Investigation of Representation, Dispute, NMB 2, on occasion, airline and railroad management unions, 180 responses, 180 hours, Lowry, R. L., 395-3772.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Evaluation of Cash-in-Lieu of Commodities Pilot Projects, single-time, 50 responses, 25 hours, Clearance Office, 395-3772.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Summer Food Service Program for Children, on occasion, State agencies, service institutes, 30,179 responses, 27,798 hours, Ellett, C. A.,, 395-6132.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Application for Veterans' Cost-of-Instruction Payments to Institutions of Higher Education, OE 269, annually, institutes of high education, 1,700 responses, 3,400 hours, Caywood, D. P.,, 395-3443.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Equal Opportunity, Housing Discrimination Complaint (English and Spanish version of same form), HUD-903, 903A, other (see SF-83), minority group members, 5,000 responses, 5,000 hours, Caywood, D. P., 395-3443.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-12463 Filed 5-5-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

ALTERNATE ENERGY SYSTEMS, INC.

Suspension of Trading

APRIL 27, 1978.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of;

Alternate Energy Systems, Inc., being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 2:15 p.m. (e.s.t.) on April 27, 1978, through May 6, 1978.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-12419 Filed 5-5-78; 8:45 am]

[8010-01]

[Rel. No. 20522(70-6149)]

COLUMBIA GAS SYSTEM, INC.

Proposed Issuance and Sale of Short-Term Notes to Banks and to Dealers in Commercial Paper and Exception From Competitive Bidding

APRIL 28, 1978.

Notice is hereby given that the Columbia Gas System Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Del. 19807, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("act"), designating section 6(b) of the act and rule 50(a)(5) promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Columbia requests authority to issue and sell through May 31, 1979, short-term notes to banks and commercial paper aggregating up to $260,000,000. Generally, Columbia will make the proceeds from the sale of these notes available to its subsidiary companies for the purchase of gas for underground storage and other liquid hydrocarbons inventories and for other short-term requirements. In this regard, see Columbia's filing for intrasystem financing (file No. 70-6142). It is stated that the short-term gas and liquid hydrocarbon requirements of approximately $260,700,000 may make it necessary to have outstanding at any one time up to May 31, 1979, the aforesaid short-time notes in the aggregate amount of $260,000,000.

Columbia proposes to issue and sell commercial paper to one or more dealers, and it will continue to do so as long as the effective interest rate is less than the effective interest cost which Columbia would have to pay to banks for an equivalent amount of funds as of the date of borrowing, except that, in order to obtain greater flexibility, commercial paper may be issued with a maturity of not more than 60 days from the date of issue with an effective interest cost in excess of such effective interest cost on bank borrowings.

The commercial paper will be in the form of promissory notes with maturities not to exceed 270 days and will not be prepayable prior to maturity. The actual maturities will be determined by market conditions, effective interest cost to Columbia, and Columbia's anticipated cash requirements at the time of issuance. The commercial paper notes will be issued in denominations of not less than $50,000 and not more than $5,000,000 and will be sold at a discount which will be not in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of the particular maturity and rating.

It is stated that no commission or fee will be payable in connection with the issuance and sale of the commercial paper notes. Each dealer, as principal will reoffer such notes at a discount rate of one-eighth of 1 percent per annum less than the discount rate to Columbia. The reoffering will be made to not more than an aggregate of 200 customers of the dealers, such customers to be identified and designated in lists (nonpublic) prepared in advance. No additions will be made to the customer lists, which will consist of institutional investors, without first advising this Commission. It is expected that Columbia's commercial paper notes will be held by customers to maturity, but, if they wish to resell prior thereto, the applicable dealer, pursuant to a repurchase agreement, will repurchase the notes and reoffer the same to others in its specified list of customers.

Columbia requests exception from the competitive bidding requirements of rule 50 for the proposed issue and sale of its commercial paper. In support of this request, Columbia states that the proposed commercial paper notes will have a maturity of 9 months or less, that it is not practical to invite competitive bids for commercial paper, and that current rates for commercial paper for such prime borrowers as Columbia are published daily in financial publications.

Columbia proposes that up to $260,000,000 of the proposed short-term borrowings may be in the form of short-term bank notes, issued from time to time in accordance with proposed credit-lines with participating banks. In no event will the proposed bank borrowings and/or commercial paper exceed an aggregate amount of $260,000,000, at any one time outstanding. A list of such banks and information regarding the terms of such borrowings are to be filed by amendment. The notes are to be repaid on or before May 31, 1979, and will be prepayable, in whole or in part, without penalty.

The expenses to be paid by Columbia in connection with the proposed transactions are estimated at $10,400, including rating fees estimated at $7,000 and charges for services of Columbia Gas System Service Corp. estimated at $1,200. Columbia has also requested that authority be granted to file certificates under rule 24 with respect to the proposed transactions on a quarterly basis.

The application states that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than May 22, 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: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in rule 23 of the general rules and regulations promulgated under the act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-12420 Filed 5-5-78; 8:45 am]

[8010-01]

[Rel. No. 10229 (812-4289)]

INCOME TRUST FOR GOVERNMENT SECURITIES, FIRST SERIES (AND SUBSEQUENT SERIES) AND PRESCOTT, BALL & TURBEN

Notice of Filing of Application

MAY 2, 1978.

Notice is hereby given, that Income Trust for Government Securities, First Series (and Subsequent Series) ("Fund" or "Funds"), registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and its sponsor, Prescott, Ball & Turben ("Sponsor") (collectively, "Applicants"), 900 National City Bank Building Cleveland, Ohio 44114, filed an application on April 7, 1978, pursuant to section 6(c) of the Act, for an order of the Commission (1) exempting Applicants, to the extent necessary, from the provisions of section 14(a) of the Act; (2) exempting the Funds from Rule 19b-1 under the Act to permit more than one distribution of capital gains in any one taxable year; and (3) exempting the secondary market activities of the Sponsor and underwriters of the Funds from provisions of Rule 22c-1 to permit weekly retrospective pricing of units of beneficial interest in the various Funds ("Units"), subject to certain conditions. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that each Fund will be governed by a trust agreement ("Trust Agreement") between the Sponsor and State Street Bank and Trust company, as Trustee ("Trustee"). Interactive Data Services, Inc. will serve as Evaluator under the Trust Agreement ("Evaluator"). Applicants state that, subject to compliance with the Trust Agreement, entities other than those named hereinabove may serve as Sponsor, Trustee, or Evaluator, respectively. Applicants further state that there was filed simultaneously with this application a Registration Statement on Form S-6 under the Securities Act of 1933. Applicants state that the assets of the Funds will consist of securities issued by the U.S. Government or an agency or instrumentality thereof, in each case as to which the payment of principal and interest is backed by the full faith and credit of the United States, and/or contracts and funds for the purchase of certain such securities ("Securities"), all of which the Sponsor shall have accumulated for such purpose. Applicants further state that the Units will represent proportionate interests in the aggregate principal amount of Securities and representing in the aggregate the entire ownership of a Fund. Applicants anticipate that the assets of the First Series of the Fund will consist primarily of mortgage-backed securities of the modified pass-through type, fully guaranteed as to principal and interest by the Government National Mortgage Association.

SECTION 14(a)

Section 14(a) of the Act, in substance, provides that no registered investment company and no principal underwriter for such company shall make a public offering of which such company is the issuer unless: (1) the company has a net worth of at least $100,000; (2) at the time of a previous public offering it had a net worth of $100,000; or (3) provision is made that a net worth of $100,000 will be obtained from not more than twenty-five responsible persons within ninety days, or the entire proceeds received, including sales charge, will be refunded.

Applicants represent that the Sponsor will deposit in each Fund not less than $5,000,000 principal amount of the Securities. Thus, each Fund, at the date of deposit of the Securities and before any Unit is offered to the public, is intended to have a net worth, represented by the market value of the Securities on that date as determined by the Evaluator, in excess of $100,000. Applicant assert that each Fund will thereby fully comply with the first requirement of Section 14(a). of the Act, to the extent necessary.

As a condition to such exemption, the Sponsor has agreed that it will refund on demand and without deduction, all sales charges to purchasers of Units of any Fund from the Sponsor or from any underwriter or dealer participating in the distribution, and liquidate the Securities held in a Fund and distribute the proceeds thereof, (1) if within 90 days from the time that the registration statement relating to the Units of such Fund has become effective under the Securities Act of 1933, the net worth of such Fund shall be reduced to less than $100,000, or (2) if such Fund shall have been terminated. The Sponsor further agrees to instruct the Trustee to terminate any Fund in the event that redemption by the Sponsor or underwriters of unsold Units results in such Fund having a net worth of less than $5,000,000 and in the event of any such termination to refund or cause to be refunded, on demand and without reduction, all sales charges to purchasers of Units of such Fund from the Sponsor or from any underwriter or dealer participating in the distribution.

RULE 19b-1

Rule 19b-1(a) provides in substance that no registered investment company which is a "regulated investment company" as defined in Section 851 of the Internal Revenue Code shall distribute more than one capital gains dividend in any one taxable year. Applicants state that distributions of principal, including any capital gains, and interest relating to each Fund will be made to Unitholders monthly. Applicants further state that distributions of principal constituting capital gains to Unitholders may arise in the following instances: (1) an issuer might call or redeem Securities; (2) Securities might be disposed of in order to maintain the qualification of a Fund as a regulated investment company under the Internal Revenue Code; and (3) Securities might be liquidated in order to provide the funds necessary to meet redemptions.

In support of the requested exemption, Applicants state that the dangers against which Rule 19b-1 is intended to guard do not exist in the situation at hand since neither the Funds nor the Sponsor have control over events which might trigger capital gains. In addition, Applicants represent that any capital gains distributions will be clearly distinguished from interest and principal distributions in the accompanying report by the Trustee to Unitholders. In order to comply with the Rule, each Fund would be forced to hold any monies constituting capital gains from the disposition of Securities until the end of its taxable year. Applicants state that such a practice would clearly be to the detriment of the Unitholders.

Applicants further point out that Paragraph (b) of Rule 19b-1 provides that a unit investment trust may distribute capital gains dividends received from a regulated investment company within a reasonable time after receipt. Applicants assert that the purpose behind this provision is to avoid forcing a unit investment trust to accumulate distributable amounts received throughout the year and distribute them only at year end, and that the operations of the Funds will be consistent with the intended objectives of such provision.

RULE 22c-1

Rule 22c-1 provides, in pertinent part, that no registered investment company issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Applicants seek an order exempting the secondary market operations of the Sponsor and the underwriters from the provisions of Rule 22c-1 under the Act. Applicants propose to value Units of the Funds, for repur-

chase and resale by the Sponsor and the underwriters in the secondary market, at prices computed on the last business day of each week ("Friday"), effective for all transactions made during the following week. The evaluation will be done by the Evaluator, who will also provide estimated evaluations on trading days in order to protect Unitholders and investors. Applicants represent that in the case of a repurchase, if the Evaluator cannot opine that the current bid side evaluation is less than the previous Friday's offering side evaluation, the Sponsor will order a new evaluation. In the case of a resale of Units in the secondary market, if the Evaluator cannot state that the previous Friday's price is no more than one-half point ($5.00 on a Unit representing $1,000 principal amount of Securities) greater than the current offering price, a full evaluation will be ordered.

Applicants state that there are two purposes of Rule 22c-1: (1) to eliminate or reduce any dilution of the value of outstanding redeemable securities of registered investment companies occuring through the practice of redeeming or repurchasing securities at a price above their net asset value or selling securities at a price based upon a previously established net asset value which permits a potential investor to take advantage of an upswing in the market and an accompanying increase in the net asset value of investment company shares, and (2) to minimize speculative trading practices which so compromise registered investment companies as to be unfair to the holders of their outstanding securities.

Applicants contend that the sale and repurchase of Units of the Fund in the secondary market cannot possibly dilute the value of outstanding securities. Applicants also contend that the proceedures followed in secondary market operations of the Fund cannot be regarded as encouraging speculative trading practices. According to the applicantion, the proposed procedure will insure that a Unitholder will never receive less than the redemption value of the Unit by selling his Unit to the Sponsor. The procedure will minimize the risk that a purchaser in the secondary market would be paying more than he would pay if daily evaluations were made.

Applicants further assert that while the purposes for which Rule 22c-1 was adopted would not be served by imposing the requirements of the rule upon the secondary market operations of the Funds, the interests of investors might be significantly impaired by imposing upon them the cost of the determinations of net asset value required by Rule 22c-1.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

Notice is further given, that any interested person may, not later than May 23, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-12421 Filed 5-5-78; 8:45 am]

[8010-01]

[Rel. No. 10219 (812-4273)]

LIFE INSURANCE COMPANY OF NORTH AMERICA AND LIFE INSURANCE COMPANY OF NORTH AMERICA SEPARATE ACCOUNT A

Notice of Application for an Order Approving Offers of Exchange

APRIL 28, 1978.

Notice is hereby given, that Life Insurance Co. of North America ("LINA"), a stock life insurance company organized under the laws of the Commonwealth of Pennsylvania, and Life Insurance Co. of North America Separate Account A ("Separate Account"), 1600 Arch Street, Philadelphia, Pa. 19101, a separate account of LINA registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust, (hereinafter collectively referred to as "Applicants"), filed an application on March 1, 1978, and an Amendment thereto on April 18, 1978, pursuant to Section 11 of the Act for an Order approving certain offers of exchange. All interested persons are referred to the applications on file with the Commission for a statement of the representations contained therein which are summarized below.

The Separate Account was established by LINA pursuant to the laws of the Commonwealth of Pennsylvania in connection with the issuance of group and individual variable annuity contracts ("Contracts") to certain persons who qualify for tax-deferred benefits under Sections 401, 403(a), 403(b), and 408 of the Internal Revenue Code of 1954 ("Code"), as amended. Applicants also offer the Contracts under deferred compensation and other retirement plans for persons who may not qualify for similar tax treatment.

The Contract-owner makes payments to LINA which deducts sales and administrative expenses. The balance of such payments under Contracts currently issued, including the Contracts which are the subject of the Application, are then allocated to one of six divisions of the Separate Account and are invested in shares of Decatur Income Fund, Inc., National Investors Corporation, Oppenheimer Fund, Inc., Trustees Equity Fund, Inc., Dreyfus Third Century Fund, Inc., or Qualified Dividend Portfolio, Inc. (collectively called "Fund(s))", which are open-end, diversified management investment companies registered under the Act. Contract owners or participants may also allocate a portion of their net purchase payments to the LINA fixed accumulation account to provide for fixed or variable annuity payments.

SECTION 11

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end investment company or any principal underwriter therefor to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that irrespective of the basis of exchange, the provisions of Section 11(a) shall be applicable to any type of offer of exchange of the securities of registered unit invest-

ment trusts for the securities of any other investment company.

Applicants' Contracts currently permit Contract owners or Group Contract participants, where permitted by State law and the retirement plan under which they are issued, to transfer the total or partial value of their Separate Account Division allocation to another Separate Account Division, or to or from LINA's general account providing for fixed accumulation, prior to annuitization. Unless otherwise restricted by state law or the applicable retirement plan, a transfer may be made no more often than once yearly measured from the date the owner or participant enters the retirement plan or date of last transfer, as applicable. One final transfer is permitted one month before annuity payments commence without regard to any other limitation. Transfers are made upon written instruction to LINA. Separate Account Division transfers are based upon accumulation unit values determined as of a valuation date coincident with or next following the date that LINA receives written instructions to make the transfer. Such pre-annuity transfers are permitted by the Commission pursuant to its Orders of Approval under Section 11 in Investment Company Act Releases Nos. 7769 and 9276. At present there is no exchange privilege once payments under the Contracts have commenced.

Applicants request Commission approval pursuant to sections 11(a) and 11(c) of the Act to permit a Contract owner or Group Contract participant to transfer the total value of his or her Separate Account Division allocation to another Separate Account Division after the annuity commencement date. Unless otherwise restricted by the retirement plan, State or other laws, no post-annuity transfer will be permitted more often than once yearly, measured from the date the owner or participant enters into the Contract or from the date of last transfer, as applicable. No transfer to or from LINA's general account will be permitted after the annuity commencement date nor will partial transfers be permitted between Separate Account Divisions. Transfers will be made upon receipt by LINA of properly detailed written instructions from the Contract owner or participant, as applicable. Upon receipt of such transfer instructions by LINA, the number of existing annuity units will be changed to reflect a new number of annuity units based upon their respective values on the valuation date coincident with or next following the receipt of proper instructions. After the annuity starting date, the value of the amount to be transferred will be based upon the present value of the remaining payments due, reflecting the attained age of the annuitant and mortality and interest assumptions. No additional sales or administrative charge will be imposed for making the transfer. Applicants represent that if Commission approval is obtained, they will grant the new transfer privileges to all of their existing Contract owners and participants, where permitted by State law, other applicable law, and their retirement plan. Applicants will send written notification of such change to each current Contract owner.

Applicants represent that the proposed liberalization of certain of the current pre-annuity transfer privileges under the Contracts apply the same principle which was previously recognized by the Commission to be appropriate in its Orders under Investment Company Act Releases Nos. 7769 and 9276.

Applicants state that the proposed extension of Contract transfer rights will be of benefit to those Contract owners or participants whose changing personal economic needs make it desirable for them to change their investment vehicle during the annuity period. It will also enable such persons to respond, if they so desire, to changes in general economic conditions after retirement which could have a meaningful effect on their retirement financial needs. Further, Applicants represent that no post-annuity Separate Account Division transfers will be actively solicited by LINA or its sales representatives, and that the absence of any charges for the exercise of the privilege or sales remuneration to sales personnel, removes the possible incentive to solicit or stimulate transfers.

Notice is further given that any interested person may, not later than May 22, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompained by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following May 22, 1978, 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. 78-12422 Filed 5-5-78; 8:45 am]

[8010-01]

[Rel. No. 10224 (812-4281)]

MINNEAPOLIS SHAREHOLDERS CO.

Notice of Application for Order

MAY 1, 1978.

Notice is hereby given that Minneapolis Shareholders Co. (the "Applicant"), 4158 IDS Center, 80 South Eighth Street, Minneapolis, Minn. 55402, a closed-end, non-diversified management investment company registered under the Investment Company Act of 1940 (the "Act"), has filed an application on March 13, 1978, and an amendment thereto on April 18, 1978, pursuant to section 17(b) of the Act for an order of the Commission exempting from section 17(a) of the Act the Applicant's sale of 700,000 shares of the common stock of Arctic Enterprises, Inc. ("Arctic") and an option to acquire an additional 100,000 shares of Arctic common stock (the "Arctic Option") to Jacobs Industries, Inc. ("JII"), the holder of approximately 84 percent of the Applicant's outstanding common stock. All interested pesons are referred to the application on file with the Commission for a statement of the matters contained therein, which are summarized below.

The application states that through May 1, 1975, the Applicant was engaged in the manufacture and sale of Grain Belt beer. On May 1, 1975, the Applicant (then known as Grain Belt Breweries, Inc.) sold it assets for a cash consideratin of $4,100,000 to I. J. Enterprises, Inc. ("IJE") a company controlled by Mr. Irwin L. Jacobs and since 1975, Applicant has not engaged in an active business. It further states that in 1975, certain shareholders of the Applicant commenced litigation against the Applicant, Irwin L. Jacobs, IJE and the then directors of the Applicant alleging that the proxy statement utilized in connection with the proposal to sell the assets of the Applicant to IJE was materially false and misleading, all in violation of the Federal securities laws and that Mr. Jacobs, IJE and the director defendants had breached their fiduciary duties to the Applicant and its shareholders. Applicant advises that this litigation, known as the Rockler I litigation, is still before the Federal courts.

Applicant further states that on December 21, 1976, Irwin L. Jacobs commenced a tender offer for any and all of the outstanding common stock of the Applicant and after two extensions of the offer, Mr. Jacobs held 784,213 shares of the Applicant's common stock or approximately 84 percent of the outstanding shares; that during the tender offer, litigation was commenced by the Applicant and the plaintiffs in the Rockler I litigation wherein it was claimed that the tender offer violated section 14(e) of the Securities Exchange Act of 1934 as well as other statutory provisions of the federal securities laws and the Minnesota Securities Act. Applicant notes that it has since sought and received the dismissal of its tender offer claims but the Rockler I plaintiffs have continued the tender offer litigation and it is known as the Rockler II litigation.

Applicant advises that on March 10, 1978, counsel for all parties to the Rockler I, Rockler II and Marsh & McLennan, Inc. litigation (the latter litigation being an outgrowth of the Rockler I litigation) and their insurers, entered into an agreement in principal for the settlement of all three cases providing for the payment of $510,000 by defendants other than the Applicant, to the Rockler I and II plaintiff class representatives in trust for the class or classes represented, and for the payment of approximately $58,261 to the Applicant in reimbursement of attorneys' fees previously paid on behalf of the defendant directors in Rockler I. The balance of such attorneys' fees previously paid by the Applicant in the amount of $43,594 will be borne by the Applicant. As a result of that tentative agreement, Applicant notes that a binding Stipulation and Settlement Agreement is expected to be executed by all parties and preliminary approval by the District Court will be sought by the parties and that if preliminary District Court approval is granted a Notice to Class Members more fully describing that Stipulation and Settlement Agreement and giving notice of a hearing for the purpose of determining whether the settlement would be finally approved by the Court will be sent to class members.

By way of additional background, Applicant states that at its Annual Meeting of Shareholders held on June 17, 1977, the shareholders of the Applicant elected three directors, each of whom had been nominated by Mr, Jacobs and that after the meeting and following the death of one of the directors, a replacement director proposed by Mr. Jacobs was elected to fill the vacated position. The Applicant's three-man board of directors consisted of Daniel T. Lindsay, President of the Applicant and Secretary of JII and Federal Financial Corp., each company controlled by Mr. Jacobs; Wayne E. Olson, Treasurer of the Applicant and Treasurer of JII and President of Federal Financial Corp; and Ralph P. Klein, an employee of J.Y.J. Corp., a company controlled by Irwin L. Jacobs. The application points out that on November 23, 1977, Mr. Jacobs conveyed his shares of the Applicant to JII, a Minnesota corporation formed on November 10, 1977; that Mr. Jacobs is the controlling shareholder of JII: and that JII also holds all of the outstanding common stock of Federal Financial Corp., a company which is in the business of collecting the accounts receivables of the W.T. Grant Co.

Applicant states further that after the new Jacobs management took control of the Applicant, a review of the Applicant's assets was made with a view toward maintaining liquidity in anticipation of an opportunity to make a long-term investment. Applicant advises that assets held by prior management consisted primarily of government securites and that it had been prior management's stated intent to liquidate the Applicant and the shareholders were about to be asked to vote on liquidation prior to the Jacobs tender offer; however, the combination of the tender offer and the Rockler litigation prevented liquidation especially in light of Mr. Jacob's expressed objection to a liquidation. Applicant further advises that after the annual meeting, new management elected to make short term investments in commercial paper secured by bank letters of credit.

In addition, Applicant advises that in April and May of 1977, Mr. Jacobs, Mr. Lindsay, Mr. Olson, and Mr. Mathisen, the then Secretary of Applicant ("Jacobs Group") were purchasing the common stock of Sonesta International Hotels Corporation ("Sonesta") and over this period 114,600 shares were purchased at an average cost of $5.16 per share and a Schedule 13D was filed with the Commission, the NYSE and Sonesta indicating that the Jacobs Group held more than 5 percent of the outstanding shares of Sonesta. Applicant states that an amendment to the 13D was filed early in July 1977, in which the Jacobs Group reported that they had sought to meet with Sonesta's management concerning a proposed tender offer at $7 per share, which filing indicated that the Applicant would make the offer if an offer was made. Applicant also states that on July 15, 1977, the Jacobs Group conveyed the 114,600 Sonesta shares to the Applicant at a purchase price of $7 per share when the market price on the New York Stock Exchange at the time of the sale was $5¾ pursuant to an agreement which permitted the Applicant to put the shares back to the members of the Jacobs Group within six months at the $7 per share price.

Applicant states that a decision was subsequently made to shelve the Sonesta tender. When the opportunity to make an investment in Arctic presented itself, the Applicant advises that it decided to make the purchase and because it did not have sufficient funds to make purchase of the Arctic Securities and still hold the Sonesta shares it elected to exercise the put. According to the application, members of the Jacobs Group proposed that a privately held company controlled by them make the purchase, whereupon the shares were sold to Federal Financial Corp. at the put price of $7 per share on or about October 1, 1977.

Applicant states that its prior management did not consider Applicant to be an investment company within the meaning of the Act and, accordingly, no steps were taken to register the Applicant under the Act prior to the time the new Jacobs' management took control. In addition, applicant advises that its new management did not consider the Applicant to be an "investment company" since management's stated purpose was to acquire an active business. However, the application recites that the interim investment in June of 1977 of the Applicant's assets in commercial paper may have caused the Applicant to come within the definition of "investment company" under the Act. The Applicant states that it did not register under the Act at that time since the purchase of the Sonesta common stock in July, 1977 for $802,200 caused only approximately 15 percent of the Applicant's assets to be invested in Sonesta. Applicant advises that in management's view the size of the Sonesta investment relative to all assets continued to make it unnecessary to register under the Act; however, the investment of Applicant's assets in government securities may have required Applicant to register under the Act as early as May, 1975. Prior to the purchase of securities of Arctic the Applicant did register under the Act by filing Form N-8A.

The Application states that management of the Applicant has not engaged legal counsel to determine when and if Applicant should have registered under the Act; but advises that management has attempted to deal with the Sonesta purchase and sale on the theory that Applicant should have been registered under the Act and in so doing the assumption was made that both the purchase from members of the Jacobs Group and the sale to Federal Financial Corp. ("FFC") of the Sonesta shares required Commission approval under section 17(b) of the Act since the members of the Jacobs Group and FFC are affiliates of the Applicant. After discussions

with members of the Jacobs Group and FFC Applicant advises that its Board of Directors directed management to seek payment in cash from members of the Jacobs Group of $143,250 which payment was received on March 8, 1978, representing the difference between the $7 per share price for the 114,600 Sonesta shares and the $5.75 closing price on the New York Stock Exchange at the date of sale to the Applicant. In addition, Applicant advises that it entered into an agreement with FFC on March 9, 1978, pursuant to which FFC agreed not to sell the Sonesta common stock for 90 days unless directed by the Applicant to: (i) sell the shares into the market and turn over the proceeds to Applicant less the $802,200 cost of the shares to FFC; (ii) tender the shares to Sonesta and turn over the proceeds to Applicant less cost; or (iii) turn over the Sonesta shares to Applicant in return for $802,200. Applicant notes that on April 12, 1978 the closing price for Sonesta common stock was $7.25 per share and that such price reflects, in part, the publicized intent on the part of Sonesta's management to redeem common stock at $8.25 per share once various filings and approvals are obtained. The Applicant contends that the arrangements with the Jacobs Group and FFC effectively place Applicant in the same position it would have been in had it purchased the Sonesta common stock in the open market, and points out that Applicant has not had any carrying expenses related to the Sonesta shares since Ocotber 1977, while, under its agreement with FFC, it has the opportunity to benefit from the sale of the shares.

The Applicant advises that on October 21, 1977, it bought 700,000 shares of common stock of Arctic, constituting approximately 23 percent of Arctic's outstanding common stock, and an option to acquire 100,000 additional shares during 1978 at an aggregate purchase price of $4,900,000 or $7 per share (the "Arctic Securities"). Applicant states that it was in connection with the proposed purchase of the Arctic Securities that the Applicant filed with the Commission a notification of registration on Form N-8A on October 13, 1977 since such purchase involved substantially all of its assets.

Applicant advises that the implications of becoming a registered investment company under the Act were not fully appreciated by the Applicant's Board of Directors at the time the Form N-8A was filed with the Commission. Subsequently, two non-interested directors were added to the Board of Directors to bring Applicant into compliance with section 10(a) of the Act. In addition, the Applicant states that its Board of Directors determined, for reasons more fully set forth in the application, that every effort should be made to dispose of the Arctic Securities and to seek exemption from the provisions of the Act so that the Applicant could return to holding cash and government securities until such time as the Rockler litigation matters were settled or otherwise resolved, at which time a decision could be made with respect to liquidation of the Applicant or, in the event an active business opportunity presented itself, continuation of the Applicant's existence in an active business endeavor would be considered. Moreover, the Applicant notes that the general decline in the stock market and the decline in Arctic's common stock caused its Board of Directors to conclude that a sale at the Applicant's purchase price was in the best interest of the Applicant and its shareholders. Applicant advises that the restricted nature of the Arctic Securities and the fact that the market prices of the Arctic common shares as traded on the New York Stock Exchange were less than $7 per share, caused the Board to conclude that JII or some other affiliate of Mr. Jacobs were the only prospects to purchase the Arctic Securities at the $4,900,000 price paid by the Applicant.

Section 17(a) of the Act prohibits, in relevant part, any affiliated person of a registered investment company, acting as principal, knowingly to sell to or purchase from such investment company any security or other property. As stated in the application, by virtue of its ownership of approximately 84 percent of the Applicant's outstanding common stock, JII is an "affiliate" of the Applicant, as that term is defined by section 2(a)(3)(A) of the Act. Moreover, JII is presumed to control the Applicant pursuant to section 2(a)(9) of the Act.

Section 17(b) of the Act provides that any person may file with the Commission an application for an order exempting a proposed transaction from one or more provisions of section 17(a) of the Act, and that the Commission shall grant such application and issue such order of exemption if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policies of the registered investment company concerned and the general purposes of the Act.

Applicant maintains that the transaction between it and JII meets the applicable criteria set forth in section 17(b). In forming its opinion the Applicant advises that its Board of Directors considered appraisal letters submitted to it by the investment banking firm of Piper, Jaffray & Hopwood Inc. ("PJH") and that the appraisals indicated that the Arctic Securities would change hands between a non-affiliated, willing buyer and a non-affiliated willing seller at an aggregate maximum purchase price of $4,450,000, some $450,000 less than the proposed selling price. According to the application, because of the relationship between the parties, the recent date of the original purchase of the Arctic Securities and the relationship between the New York Stock Exchange closing price on October 21 and the recent closing price of $6 per share on January 6, 1978, it was determined that a price lower than the total aggregate purchase price paid by the Applicant for the Arctic Securities could not be justified. Moreover, because of the pending Rockler litigation and the hostilities arising therefrom, Applicant states that it was deemed imprudent for the Applicant's controlling shareholder to effect a purchase of the Arctic Securities at a price lower than the original purchase price. In addition to the total aggregate sale price of $4,900,000 proposed by JII, Applicant advises that JII also has agreed to reimburse the Applicant for the expense of the PJH appraisals, the cost of holding the Arctic Securities at the rate of 6 percent, and certain other expenses including up to $15,000 of legal fees associated with the assessment of the Applicant's responsibilities under the Act and the preparation of this application.

The Applicant's stated belief is that the proposed sale of the Arctic Securities is consistent with its stated investment policy since its stated policy is to effect the sale of the Arctic Securities so as to permit it to seek an order of the Commission terminating its investment company status. The Applicant further believes that the transaction is consistent with the general purposes of the Act to protect the public interest and the interest of investors.

Notice is further given that any interested person may, not later than May 23, 1978, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of

course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-12423 Filed 5-5-78; 8:45 am]

[8010-01]

[Rel. No. 10225 (812-4275)]

MUTUAL ASSET AND MANAGEMENT, INC.

Notice of Filing of Application Pursuant to Section 6(c) of the Act for an Order of Exemption From all Provisions of the Act

MAY 1, 1978.

Notice is hereby given that Mutual Asset and Management, Inc. ("Applicant"), an open-end diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on March 3, 1978, for an order of the Commission pursuant to section 6(c) of the Act exempting Applicant from certain provisions of sections 10(a), 14(a), 20(a) and rule 20a-1 thereunder, 22(d) and 24(d) of the Act and temporarily exempting the Applicant from certain provisions of sections 16(a) and 32(a) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Applicant was organized on February 22, 1978, under the Business Corporation Act of the State of Connecticut for the primary purpose of qualifying as an investment company of the type contemplated under title 36, chapter 641, section 36-96(12) of the Connecticut General Statutes, to serve as an investment medium for mutual savings banks in Connecticut and for the Connecticut Savings Bank Life Insurance Company. Applicant is subject to the following five fundamental limitations prescribed by the above-described Connecticut Statutes:

(1) Applicant must be registered under the Act;

(2) All of Applicant's shares must be owned by savings banks organized under the laws of the State of Connecticut and doing business there or by the Connecticut Savings Bank Life Insurance Company (hereinafter sometimes called "Authorized Investors");

(3) Applicant's assets must be invested only in such investments as are specifically permitted by section 36-96 and section 36-96(2)-(9), inclusive, of the Connecticut General Statutes;

(4) The amount of stock of any corporation which Applicant may hold cannot exceed, at the time of the investment by Applicant, 5 percent of the total number of shares of such corporation then outstanding; *Provided, however,* That at the time of such investment the amount invested by Applicant in the stock of any corporation shall not exceed 10 percent of the total assets of Applicant; and

(5) The total investment of any Connecticut mutual savings bank in the stock of Applicant cannot exceed six percent (6%) of such savings bank's assets.

Applicant advises that it intends to keep the Bank Commissioner of Connecticut informed on all aspects of its affairs and activities and to send to the Commissioner all reports that it sends to its shareholders and such other additional information which the Commissioner may request.

Applicant represents that it will be an investment company wholly owned by the Authorized Investors and will be internally managed by a Board of Directors consisting of individuals who are also officers of certain of the Connecticut mutual savings banks which will ultimately own stock in the Applicant. Applicant alleges that such individuals are not agents of their respective savings banks and are acting as Directors of Applicant solely in their individual capacities. There will be no outside investment adviser employed by Applicant. In addition, Applicant will contract for custodial services with the Colonial Bank & Trust Co. of Waterbury, Conn.

Applicant states that it does not propose to use an underwriter; it is contemplated that any Authorized Investor desiring to participate in the initial offering of Applicant's shares may place an order directly with Applicant at a price of $10,000 per share. Thereafter, any Authorized Investor, during certain periods of time established by the Applicant's Board of Directors, may purchase shares in the same manner at the then current net asset value per share. Redemptions will be effected in a similar manner, except for a redemption charge presently fixed at 1 percent of the current net asset value per share computed next after receipt by the Applicant or its transfer agent, if any, of the notice of redemption.

Applicant requests exemption from the following provisions of the Act to the extent stated below:

From section 10(a) of the Act which provides that no registered investment company shall have a board of directors more than 60 percent of the members of which are persons who are "interested persons" of such registered company as defined in section 2(a)(19) of the Act. Applicant states that at its inception, it is conceivable that its Board of Directors may be composed of certain officers of stockholders holding more than twenty-five percent (25%) of Applicant's stock. Although such officers will be acting solely in their individual capacities and will not be agents of their respective banks, under a strict reading of the Act, such officers may be deemed to exercise "control" of or for their respective savings bank within the meaning of section 2(a)(9) of the Act. Applicant states that, accordingly, it is possible that more than 60 percent of the Directors of Applicant might be deemed to be "interested persons" within the meaning of section 2(a)(19) under the Act. Applicant maintains that the statutory limitation of section 10(a) is neither necessary nor in the public interest in light of the Applicant's expressed intention to keep the Connecticut Bank Commissioner informed of all aspects of Applicant's affairs and activities and to provide the Bank Commissioner with copies of, and an opportunity to comment upon, all reports to Applicant's stockholders and reports and registration materials filed with the Commission. Applicant further states that the necessity for such limitation is mitigated by virtue of the very stringent statutory limitations imposed upon Applicant's choice of securities for its investment portfolio.

From section 22(d) of the Act which provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. Applicant states that in view of the fact that each Authorized Investor is an experienced and sophisticated institutional investor and that Applicant's shares provide a common investment only for such Authorized Investors, Applicant does not propose to deliver a prospectus to them. Instead, before accepting an initial order from any Authorized Investor, Applicant will furnish a copy of its Certificate of Incorporation and its By-Laws, its custodian agreement with The Colonial Bank & Trust Co., its notification of and registration under the Act, this application and the Commission's order with respect thereto. Thereafter, the Applicant will insure that prospective purchasing Authorized Investors which are considering making subsequent purchases are provided with any material amendments to the foregoing documents. In addition, upon the written request of any Authorized Investor, the Applicant will deliver its most recent quarterly or annual report required under the Act. Applicant maintains that, under these circumstances, requiring the de-

livery of a prospectus to prospective purchasers would impose an undue expense and an unnecessary burden upon the Applicant without commensurate benefits to the Authorized Investors which may purchase its stock.

From section 14(a) of the Act, which, in part, requires a registered investment company to have a net worth of at least $100,000 before publicly offering its securities unless such company meets the rquirements of section 14(a) (2) or (3). Applicant states that it has firm commitments from four Connecticut mutual savings banks for the purchase of 170 shares of its stock at an aggregate purchase price of $1,700,000. Applicant states that inasmuch as it is seeking an exemption from section 24(d) of the Act so as to be able to rely upon an exemption from the registration requirements under the Securities Act of 1933, it would not, if such exemption is granted, meet the literal requirements of section 14(a)(3) of the Act.

From section 20(a) of the Act and rule 20a-1 thereunder, which requires that the solicitation of proxies by registered investment companies must be in compliance with the rules and regulations issued by the Commission under section 14(a) of the Securities Exchange Act of 1934. Applicant states that compliance with the proxy rules and regulations would serve no useful purpose. Applicant states that in view of the shareholders' knowledge of the conduct of its business, to require compliance with the proxy rules and regulations would not provide any corresponding benefit to Applicant's shareholders. In addition, Applicant states that in light of the sharply circumscribed limitations on investments imposed by section 36-96(12) and in light of the availability for review of all relevant documents of Applicant by the Connecticut Banking Commissioner, the added burden and expense of complying with section 20(a) and rule 20a-1 thereunder seems unwarranted. Applicant also states that the substantive information generally contained in the documents would, in large part, be contained in the documents being made available to prospective investors.

From section 24(d) of the Act which renders inapplicable to investment companies the "intra-state" offering exemption from the registration 3(a)(11) thereunder. Applicant alleges that such exemption would be available to Applicant were it not for section 24(d) of the Act. It alleges that inasmuch as it has been organized solely to provide Authorized Investors with a common investment medium, it is evident that neither the general public interest nor the interest of any of such Authorized Investors would be served by requiring registration under the Securities Act of 1933.

Applicant also requests temporary exemptions from sections 16(a) and 32(a) of the Act, which, respectively, require that shareholders of a registered investment company: (i) elect its directors, and (ii) ratify the selection of its independent public accountants. Applicant has no shareholders and will have none until its sells shares after it becomes registered as an investment company and after the exemptions requested by this application have been granted. Applicant states that it does not plan to have a shareholders' meeting until a special meeting is held during May or June of 1978, at which meeting the above two matters will be submitted. Since Applicant will issue no shares until the above prerequesites are fulfilled, there could be only a few months during which shareholder approval would be lacking.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person or transaction from any provision or provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than May 26, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
SECRETARY.

[FR Doc. 78-12424 Filed 5-5-78; 8:45 am]

[8010-01]

[Release No. 14718 (SR-NYSE-78-24); (SR-Amex-78-10)]

NEW YORK STOCK EXCHANGE, INC., AND AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Changes

MAY 1, 1978.

I. THE EXCHANGES' RULE PROPOSALS

On April 13, 1978, the New York Stock Exchange, Inc. ("NYSE") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), and rule 19b-4 thereunder, copies of a proposed rule change which would permit members to register as Registered Competitive Market Makers ("RCMM's") and would establish the obligations of such members as market makers on the NYSE floor.[1] Amendments which substantially changed the proposed obligations of the RCMM's were filed by the NYSE as amendment No. 1 to file No. SR-NYSE-78-24 on April 26, 1978.[2]

On April 17, 1978, the American Stock Exchange, Inc. (the "Amex"), also filed with the Commission, pursuant to section 19(b)(1) of the Act and rule 19b-4 thereunder, copies of a proposed rule change which would permit its members to register as Registered Equity Market Makers ("REMM's") and establish the obligations of such members as market makers on the Amex floor.[3] On April 26, 1978, the Amex filed, as amendment No. 1 to file

[1] Notice of this initial NYSE 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. 14694 (Apr. 21, 1978)), and by publication in the FEDERAL REGISTER (43 FR 17890 (Apr. 26, 1978)).

[2] Notice of amendment No. 1 to the NYSE proposed rule change, together with the terms of substance of the proposal as amended, was given by publication of a Commission release (Securities Exchange Act Release No. 14706 (Apr. 26, 1978)), and by publication in the FEDERAL REGISTER (43 FR 18380 (Apr. 28, 1978)). Technical corrections, which do not change the substance of file No. SR-NYSE-78-24 were filed by the NYSE on May 1, 1978, as amendment No. 2 to that file.

[3] Notice of this initial Amex 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. 14691 (Apr. 20, 1978)), and by publication in the FEDERAL REGISTER (43 FR 17888 (Apr. 26, 1978)).

No. SR-Amex-78-10, substantial modifications to the proposed obligations of its REMM's.[4] As amended, the NYSE and Amex proposals both are intended to create a category of market makers whose transactions on their respective exchanges would qualify for an exemption under section 11(a)(1)(A) of the Act, and would accomplish that result through the implementation of new rules and amendments to existing rules of each exchange. It is these amended rule proposals which the Commission considers herein.

The stated purpose of SR-NYSE-78-24, as well as SR-Amex-78-10, is to create a supplemental market making function in listed stocks for which NYSE "competitive traders" [5] and Amex "floor traders" may qualify in order that their proprietary on-floor transactions may be eligible for the section 11(a)(1)(A) exemption for market maker transactions. To accomplish this, the NYSE and Amex each have proposed to authorize members to register as supplemental dealers (which the NYSE would label as RCMM's and Amex as REMM's) who would assume certain obligations to the markets in listed stocks (and possibly warrants) maintained by the two exchanges. The proposed classes of market makers on the NYSE and the Amex would not, however, assume obligations equivalent to those of a specialist or competing specialist in specified securities, nor would such members be designated as specialists for purposes of obtaining preferential credit treatment under rules promulgated by the Board of Governers of the Federal Reserve system.[6] As a consequence of their unique status, the proprietary trading of members who choose to register as RCMM's or REMM's would be governed by new rules which the NYSE and Amex assert would qualify such members as market makers and thereby exempt them from the prohibitions of section 11(a) of the Act.[7] The NYSE and Amex rule proposals both would expire automatically on July 31, 1979, unless extended by further exchange rules approved by the Commission pursuant to section 19(b) of the Act.

The NYSE and Amex both would require a member to pass an examination and register with the exchange before acting as an RCMM or REMM on either exchange.[8] Initial registration on the NYSE also would be conditioned on satisfaction of a capital requirement of $25,000 over and above any other applicable NYSE or federal requirement. Amex RCMM's would not be subject to any capital requirement other than that provided by the Commission's Uniform Net Capital rule.[9]

All transactions affected by RCMM's and REMM's and all bids or offers made by RCMM's or REMM's would be required to constitute a course of dealings in a manner consistent with the maintenance, as far as reasonably practicable, of a fair and orderly market.[10] REMM's on the Amex would be registered to perform market making functions in such securities as the prospective REMM would select and would be required to comply with all obligations of a REMM in each such designated security.[11] RCMM's on the NYSE would not select, or be assigned to specific securities, but would be required to fulfill all obligations of a RCMM in every security traded on the NYSE. RCMM's and REMM's would be permitted to act as floor brokers and to execute customer orders in any securities traded on the NYSE or Amex, but would not be able to transact as broker and dealer in the same security during the same trading session.

Apart from these general obligations, any member who becomes a RCMM or REMM shall be subject to call by a floor official, or a floor broker holding an unexecuted customer order, to improve the market in any listed stock. The RCMM would be obliged to enhance the market in a particular issue by either (1) bidding or offering so as to narrow the spread in the established quotation by at least the minimum trading variation or (2) improving depth by at least one unit of trading by making a bid equal to the current bid or an offer equal to the current offer. REMM's on the Amex would be subject to the same requirements to bid or offer, but would be required to equal or better the current bid or offer, as requested, only if that bid or offer was quoted by the Amex specialist for his own account. The alternative duties of both RCMM's and REMM's to improve the market in a particular issue arise generally whenever a RCMM or a REMM responds to a call by a floor official or floor broker or seeks to effect a proprietary trade without being called. Thus, the NYSE and Amex seek to qualify all on-floor, proprietary trades effected by RCMM's or REMM's as market maker transactions for purposes of the exemption in paragraph (A) of section 11(a)(1) of the Act.

These obligations to trade in a manner which results in either stabilizing transactions [12]or a narrowing of the existing quotation are subject to certain limited exceptions. These exceptions would permit RCMM's and REMM's to engage in the following transactions:

(1) Any transaction where a market maker liquidates a long or short position at a loss;

(2) A sale of stock on a "zero minus" tick at the bid provided that all market makers and the specialist in the aggregate do not sell more than 50 percent of all such stock bid for in the market; the NYSE would restrict this exception to situations where the quotation spread is at the minimum variation (generally, one-eighth of a dollar) and the minimum variation was not the result of the subject RCMM's offer.

(3) A purchase of stock on a "zero plus" tick at the offer to cover a short to cover a short position provided that

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[4] Notice of amendment No. 1 to the Amex proposed rule change, together with the terms of substance of the proposal, as amended, was given by publication of a Commission release (Securities Exchange Act Release No. 14707 (Apr. 26, 1978)) and by publication in the FEDERAL REGISTER (43 FR 18379 (Apr. 28, 1978)).

[5] There are no substantive differences between the NYSE and Amex rules which currently govern the trading conduct of members who are called "competitive traders" on the NYSE and "floor traders" on the Amex.

[6] Regulations T (12 CFR 220.1-.8) and U (12 CFR 221.1-4.7).

[7] The NYSE and Amex both have submitted supplemental material to file Nos. SR-NYSE-78-24 and SR-Amex-78-10, respectively, by which the exchanges and their counsel further explain why their respective rule proposals qualify RCMM's and REMM's as market makers for purposes of the section 11(a)(1)(A) exemption. See letter dated Apr. 26, 1978, from James E. Buck, Secretary, NYSE, to Andrew M. Klein, Director of the Division of Market Regulation (file No. SR-NYSE-78-24) and letter dated Apr. 26, 1978, from Gordon L. Nash, Lord, Day & Lord, counsel to the Amex, to George A. Fitzsimmons, Secretary of the Commission (file No. SR-Amex-78-10). Copies of these materials are available for public inspection in the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C.

[8] Both exchanges would defer, for such reasonable time as would allow adoption of an appropriate examination, the examination requirement for members who sought to register as RCMM's or REMM's by May 1, 1978, the date on which Section 11(a) of the Act becomes effective with respect to those traders who were registered in that capacity on May 1, 1975.

[9] Securities Exchange Act Rule 15c3-1, 17 CFR 240.15c3-1.

[10] See proposed NYSE Rule 107B(2-6) and proposed Amex Rule 114(b) and (c)(1). File No. SR-NYSE-78-24 and SR-Amex-78-10.

[11] Market participation by an RCMM on the NYSE is prohibited on an issue-by-issue basis under the following circumstances: (1) the market maker (or affiliated person or organization) has an option position in the particular security; (2) the market maker has already transacted as broker in the stock during the same trading session; and (3) a market maker's transaction in the issue would be excessive in relation to his available capital.

[12] A transaction is considered to be stabilizing if it is a purchase at a price which is lower than the last preceding transaction at a different price (a minus or zero minus tick) or a sale at a price which is higher than the last preceding transaction at a different price (plus or zero plus tick).

all market makers and the specialist in the aggregate do not buy more than 50 percent of such stock offered in the market; the NYSE again restricts this exception to situations where the spread is at the minimum variation and that spread is not the result of the subject RCMM's bid.

(4) A purchase of stock on a "zero plus" tick at the offer, at or below the previous day's closing price in that security, again provided that all market makers and the specialist in the aggregate do not buy more than 50 percent of the stock offered; the NYSE also restricts this exception as described in (3) above.

Both proposals also would implement certain recordkeeping requirements concerning the participation of RCMM's or REMM's in the markets. The NYSE and Amex model their proposed recordkeeping requirements for REMM's and RCMM's on existing recordkeeping requirements governing floor traders. The Amex proposed rule specifies that an REMM must file daily a report indicating the opening position of the REMM and (for each trade) the time, price, tick, number of shares, broker representing the other side of the transaction (or, when applicable, the specialist), whether the trade resulted from a bid or offer requested by a floor broker or floor official and, if so, the name of the person making the request. Similarly, a floor official or floor broker on the Amex who requests an REMM to make a bid or offer is required to report such requests, although he apparently is not required to report the circumstances surrounding the request or the response which is given to such request.

The NYSE proposed rule specifies that an RCMM must keep a record of each trade initiated on the floor for his own account showing the sequence in which each of his transactions actually took place, the tick, and, "insofar as practicable," the time of each transaction. Unlike the Amex proposal, the NYSE will not require RCMM's to report this information to the NYSE on a daily basis, but only on a periodic spot-check basis when requested by the NYSE.

The NYSE proposed rule, however, does specify instances which require filing of a report as to particular conduct of its RCMM's. First, an RCMM must immediately file a report of any transaction resulting from a request for a quotation by a floor official or floor broker. Such a report must include information describing the details of the trade and state of the market at the time of the trade, and be initialed by the floor official or floor broker who requested the bid or offer. The NYSE, however, does not require floor officials or floor brokers to record and report their requests for RCMM participation or the nature of the response or lack of response to such requests. Second, an RCMM must immediately file a report of any transaction which is effected pursuant to proposed exemptions which permit RCMM's, under certain circumstances, to engage in transactions which reach across the prevailing quotation.

COMMISSION FINDINGS

The Commission finds that the NYSE and Amex rule proposals represent efforts to establish a category of members on each exchange to perform the functions of market makers in equity securities and that, as programs of limited duration, the proposed rules of the NYSE and Amex which would attempt to accomplish this result are consistent with the purposes of the Act.

Section 3(a)(38) of the Act defines the term "market maker" as, among other things,

> any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

One element of this definition focuses on the market making relationship between the dealer [13] and a particular security. The market in that security would theoretically benefit from the participation of the market maker by the addition of greater depth, liquidity and continuity. The NYSE proposed rule change would not require the assignment of specific securities to the RCMM. An RCMM's obligations would extend to each NYSE-listed stock. On the Amex, a REMM would assume market-making obligations only with respect to issues in which such member determines to register.[14]

Another element of the market maker definition requires a dealer to "hold himself out (by entering quotations in an inter-dealer communications system or otherwise)." At the minimum, a market maker would appear to be required to communicate to another person in some fashion concerning the availability of his market making capabilities in a particular security. That communication process might involve the publication of quotations in an inter-dealer communications system or any other comparable means. It also might include an agreement to provide quotations upon request. In general, the "holding out" would not seem to require more than an explicit agreement to take certain actions upon request, e.g., to provide quotations, provided that agreement is communicated to other persons.

In a market not characterized by the physical presence of brokers and dealers representing all orders, the market maker continually presents a quotation as representative of the market he is willing to make in a particular security.[15] The market maker's quotation is firm without regard to whether better bids and asks of other market makers exist, and may in fact differ from those other bids and asks.

In an exchange market which focuses on a trading floor, only the best bid(s) and best offer(s) have any standing.[16] Therefore, in an exchange market which only recognizes the best bid(s) and offer(s), the Commission believes that a person should be prepared to act in a meaningful way in any security in which he agrees to act as a market maker by providing either a bid or an offer (depending on which one is needed) which must match or better other bids or offers present in the market. By making that kind of contribution, a market maker would obtain standing for his bids or offers and the presence of those bids and offers in the market should contribute to the maintenance of a fair and orderly market in the subject security.

The Amex and NYSE rule proposals would require a REMM or RCMM, whenever he was making a bid or offer (whether requested by a floor official or floor broker or not) or effecting a purchase of sale, for his own account, to engage in a course of dealings for his own account or for the account of his member organization in a manner consistent with the maintenance of a fair and orderly market. In addition, the REMM or RCMM would be subject to call by a floor official or floor broker holding an unexecuted customer's order in any security at any time. Specifically, an RCMM on the NYSE would be required, in entering a quotation (or effecting a transaction) (i) to better the existing bid or offer by no less than the minimum variation of trading in that security or (ii) to improve the depth of the market in that security by equalling (for at least one round lot) the current bid or offer. An REMM on the Amex would be subject to a similar requirement, but would be required to better or equal the existing bid or offer only when that bid or offer was made by the registered specialist for his own account. The

[13] Section 3(a)(5) of the Act provides that the term "dealer" means any person engaged in the business of buying and selling securities for his account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.

[14] Proposed Amex Rule 114(a)(4); proposed NYSE Rule 107B (4), (5), and (6). File Nos. SR-Amex-78-10 and SR-NYSE-78-24.

[15] E.g., broker-dealers which display bids and offers in the NASDAQ system or in the experimental multiple dealer system operated by the Cincinnati Stock Exchange. See Securities Exchange Act Release No. 14674 (April 18, 1978).

[16] See NYSE Rule 70 and Amex Rule 126.

RCMM and REMM both are required to enter a bid or an offer on the side of the market requested by the floor official or floor broker.[17] On the basis of the information available to it at the present time, the Commission believes that the combination of the two requirements enumerated above, i.e., the "on call" requirement and the "competitive bid/offer" requirement, should be deemed to satisfy the "holding out" standard set forth in the section 3(a)(38) definition of market maker during the temporary period when these rules are in effect.

The definition of a market maker also requires that he must be willing to buy and sell the particular security in which he has assumed a market making role. In order to satisfy this element, a market maker would appear to be required only to agree to buy and sell stock. There is not, however, an explicit reference as to what quantity or price must be provided. In this regard, the Commission views the obligations which the RCMM's and REMM's would assume, (a bid or offer for one round lot equal to or better than, on the NYSE, the current bid or offer and, on the Amex, the current bid or offer for the account of the registered specialist) as sufficient, for purposes of an initial experiment to determine whether such members, in fact, will function as market makers, to be consistent with the requirements of the Act.

A final element requires a market maker to be willing to buy and sell "on a regular or continuous basis." That element provides an indication of the frequency a market maker should be willing to perform in that capacity. A continuous market implies that the market maker is maintaining or establishing a quotation or other form of "holding out" without any time lag or interruption.[18] A regular market, while something less than "continuous," should be characterized by a bona fide effort to provide bids or offers in a reliable manner, which could include upon request or at periodic intervals of time. The Commission believes that the NYSE and Amex proposals should be sufficient to assure that RCMM's and REMM's will be required to provide regular bids and offers in a manner which would qualify them, during the temporary period when these rules will be in effect.

The Commission believes that the rules provisions which require a REMM or RCMM either to narrow the spread or improve the depth of a market in a given security, and be prepared to participate (at risk) in the market in a constructive manner at any time represents what may be potentially a useful means of encouraging competition on the Amex and NYSE and improving the markets which those exchanges provide. The Commission notes, however, that the rule proposals, as approved herein, would expire automatically on July 31, 1979. The Commission believes that this "sunset" provision is appropriate and facilitates its finding that RCMM's and REMM's, under the proposed rules, may act in a manner which would qualify them as market makers. During this period the Commission will monitor the implementation of this market maker function and, as set forth herein, seek the views of interested persons as to whether the obligations imposed upon RCMM's and REMM's, and their actual conduct in the marketplace, justify exempting their transactons in these capacities under section 11(a)(1)(A) of the Act. In light of the lack of any information which would indicate that, in practice, the obligations proposed by the NYSE and Amex would assure a bona fide market making function, the Commission's findings are based solely on what the Commission believes will be adequate safeguards in the rules approved today. Should the NYSE or Amex choose to file, pursuant to section 19(b) of the Act, proposed rules which would adopt these proposals on a permanent basis, the Commission wishes to make clear that it would require the exchanges to justify such proposals with specific data and statistics demonstrating that RCMM's and REMM's have acted in a manner which qualifies them as market makers.[19]

The Commission also has determined that, while the provisions of the proposed exchange rules which would permit RCMM's and REMM's to effect certain destabilizing transactions do not in themselves represent any undertaking to perform the functions of a market maker, they are, on balance, designed to facilitate the ability of an RCMM or REMM to engage in market making activities which could contribute to the maintenance of fair and orderly markets.

The Commission recognizes that the ability of floor traders or market makers to be attracted to the floor by commercial opportunity may require permission for those parties to liquidate positions and obtain the use of capital made available by such liquidations for activity in other securities. Further, it notes that, in particular, this provision permitting liquidations at a loss poses little threat of permitting market makers to use such liquidations as a means of manipulation, since any manipulation relying on these liquidations would be limited by the existing positions of the market maker and his willingness to continue taking a loss in furtherance of the manipulation.

With respect to the ability of RCMM's or REMM's to liquidate long or short positions at a profit on zero plus or zero minus ticks or acquire positions, below the previous day's close, on zero plus ticks, the Commission notes that while such transactions are not necessary to the maintenance of a fair and orderly market in the subject security, they also appear, at this time, to pose little threat of disrupting the market in that security or being used for manipulative purposes. First, market makers may not initiate a destabilizing tick by selling (except at a loss) on a minus tick or covering a short on a plus tick, but can only effect these destabilizing trades after the respective minus or plus ticks have been established. Second, market makers and the specialist in the aggregate may not take more than 50 percent of the stock bid or offered at a price which would result in a destabilizing transaction. Thus, a destabilizing trend through a given price level could not be continued without participation of orders other than those of market makers or the specialist.[20] Finally, as in liquidating a position at a loss, it may be desirable for a market maker to liquidate a position so that he may utilize the resulting free capital to assume positions in other securities where a greater need for a market making contribution exists.

On balance, and in view of the perceived need for market makers to trade in a destabilizing manner to achieve a profitable return, by means of the exemptions discussed above, the Commission has determined to permit the RCMM's and REMM's to effect such transactions during the interim period of these rules. The Commission would be quite concerned, however, if, as the NYSE and Amex gain experience with RCMM's and REMM's, it becomes apparent that market makers are utilizing the exemptive provisions for a substantial percentage of their trading activity rather than trading primarily in a manner better calculated to improve NYSE and Amex markets.[21]

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[17] Proposed Amex Rule 114(c); proposed NYSE Rule 107.10(ii).

[18] The principal example is a market maker in the NASDAQ system which is obligated to enter quotations in such system during business hours. Schedule D., N.A.S.D. Manual (CCH) ¶1653A.

[19] See discussion infra at p. 14-15 concerning the exchanges' proposals to monitor trading by their market makers while these rules are effective.

[20] The Commission also notes that the NYSE would prohibit its RCMM's from engaging in such transactions except in markets where the quotation is at the minimum variation. Further, although Amex REMM's are not bound by such a restriction, it would be in their economic interest, when effecting such a liquidation, to attempt to effect a transaction by narrowing the spread before reaching across to hit the bid or offer.

[21] The Commission notes that the Amex would require 75 percent of its REMM's

Footnotes continued on next page

In approving these proposals, the Commission notes that the exchanges, in their proposals, have undertaken to implement certain recordkeeping procedures designed to monitor the performance of RCMM's and REMM's. While the Commission believes that the recordkeeping provisions constitute a necessary first step in determining whether REMM's and RCMM's are complying with their obligations as market makers, it also is concerned that the information which the exchanges obtain be accurate and reliable and provide a meaningful picture of the function which these market makers will perform on the NYSE and Amex. In this regard, the Commission is concerned that the NYSE and Amex lack sufficient procedures to assure that they (or, where necessary, the Commission) can verify the accuracy of the information obtained by the exchange from the market makers. In particular, the Commission does not believe that it currently is possible on either the Amex or NYSE independently to verify the identity of any individual giving a quotation or the precise time in which such quotation is given in relation to preceding and subsequent transactions. This, of course, presents difficulties with respect to the exchanges' abilities to assure that market makers are responding with quotations which are consistent with the requirements of their rules or, when trading on their own initiative, are complying with applicable restrictions. Further, the Commission is concerned that the exchanges may not, as a practical matter, be able to enforce compliance with their rules by monitoring the 50 percent restrictions on the ability of market makers to reach across the market and sell stock to prevailing bids when liquidating a position at a profit or acquiring a position at a price at or below the previous day's close. The difficulty arises in part because neither the NYSE nor the Amex have any reliable means of determining at any given time, the exact amount of stock being bid for at a particular price, either on the specialist's book or in the crowd, and, accordingly, of ascertaining whether more than 50 percent has been taken by the market makers.

In this regard, the Commission's further review of the market maker proposals will rely to a significant extent on the ability of the NYSE and Amex to provide concrete evidence that its market makers do trade in a manner which contributes to the maintenance of fair and orderly markets. The Commission therefore notes its concern that the presentation of such reliable evidence will be facilitated by, and may be impossible without, the implementation of audit trail mechanisms on the NYSE and Amex designed to provide a comprehensive and reliable means of monitoring trading and ensuring compliance with applicable requirements.

GOOD CAUSE FOR ACCELERATED APPROVAL

Section 19(b)(2) of the Act permits the Commission to approve a proposed rule change submitted by a self-regulatory organization prior to the 30th day after the day of publication of notice of filing thereof if the Commission finds good cause for doing so and publishes its reasons for so finding.

As discussed above, the purpose of the NYSE and Amex proposals is to permit their floor traders to register and trade in a capacity which would qualify for an exemption from section 11(a) of the Act, which becomes effective on May 1, 1978.[22] Absent Commission approval of these proposals, existing floor traders will not be permitted to trade on the floor of the NYSE or Amex unless they otherwise qualify for an exemption under section 11(a) of the Act. The late dates, however, on which the NYSE and Amex filed both their initial proposals and subsequent amendments would preclude the Commission from providing, before May 1, 1978, the opportunity for public comment which section 19(b) of the Act would otherwise require with respect to these proposals.[23] The provision of the customary 30-day comment period in this instance would disrupt certain trading activities on the NYSE and Amex which the Commission believes have the potential for improving the depth and liquidity of those exchanges' markets and increasing competition generally therein.

In addition, the Commission notes that the failure to act favorably on either SR-NYSE-78-24 or SR-Amex-78-10 by May 1, 1978, would compel cessation of on-floor proprietary trading by a number of NYSE and Amex registered traders, who would not otherwise be able to qualify for exemption under section 11(a). To the extent that floor traders act in the capacity of "market makers" under section 3(a)(38) and 11(a)(1)(A) of the Act, they are engaged in exchange activities which the Congress explicitly recognized as having a beneficial market impact and which should be allowed under section 11(a).[24] The Commission has found that implementation, during the interim period ending July 31, 1979, of the NYSE and Amex programs under the rule changes contained in SR-NYSE-78-24 and SR-Amex-78-10 is consistent with the purposes of the Act, including section 11(a). Accordingly, the Commission believes that preventing members who would register as RCMM's or REMM's from effecting proprietary transactions of May 1, 1978, in compliance with the NYSE and Amex market-maker rules, would not result in any demonstrable furtherance of the purposes of section 11(a) or of the Act in general and would cause unnecesary financial hardship to these persons.

In view of the foregoing, the Commission finds, pursuant to section 19(b)(2) of the Act, that good cause exists to accelerate approval of SR-NYSE-78-24 and SR-Amex-78-10. Although the Commission approves the NYSE and Amex proposals on an accelerated basis, the Commission actively solicits and will review any comments received from interested persons during the 15-month lifespan of the instant NYSE and Amex rules. In particular, commentators are invited to submit their views (supplemented by any relevant data or statistics) with respect to (1) whether additional affirmative obligations (e.g., a requirement to provided quotations in one or more particular securities on a regular or continuous basis) or negative obligations (e.g., a prohibition against any or all destablizing transactions) should be imposed upon NYSE RCMM's or Amex REMM's (2) whether any existing affirmative or negative obligation should be modified or perhaps removed, and (3) whether, in practice, NYSE RCMM's or Amex REMM's provide significant liquidity, continuity and depth to the market, particularly under difficult market conditions and/or in respect to less active stocks.

Written comments received will be used by the Commission to assist it in monitoring the experiment, assessing the efficacy of the temporary NYSE and Amex rules approved today, determining whether there may be any need for the Commission to terminate or modify the experiment, and reviewing any subsequent rules which the NYSE or Amex may submit to obtain additional or permanent authority for the operation of nonspecialist market makers on their respective floors.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (as amended by the submission of Amendment No. 1 to both File Nos. SR-NYSE-78-24 and SR-Amex-78-10), which would permit members of the NYSE and Amex to

Footnotes continued from last page
transactions to be stabilizing on a monthly basis.

[22] Section 11(a)(3), 15 U.S.C. 78k(a)(3).

[23] The Commission understands that the failure of the NYSE and Amex to file their proposals on an earlier date was at least in part, a consequence of the anticipated enactment of legislation (recommended by the Commission) which would delay the effective date of section 11(a)(1) of the Act until November 1, 1979. That legislation has not yet been enacted into law.

[24] Securites Act Amendments of 1975, Report of the Senate Comm. On Banking, Housing and Urban Affairs, to accompany S. 249, S. Rep. No. 94-75, 94th Cong. 1st Sess. 68 (1975).

register as market markers and establish the obligations of such members as market makers on the respective exchange floors, be, and they are hereby approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-12426 Filed 5-5-78; 8:45 am]

[8010-01]

[Release No. 14719; (SR-NYSE-78-26)]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

MAY 1, 1978.

On April 13, 1978, the New York Stock Exchange, Inc. (the "NYSE") filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (U.S.C. 78s(b)) the ("Act") and Rule 19b-4 thereunder (17 CFR 240.19b-4), a proposed rule change to amend NYSE Rule 111 which prohibits any member other than a competitive trader from initiating transaction on the NYSE floor for its own account or the account of his member organization. The proposed rule change, among other things, added registered competitive market makers as exception to this prohibition in order to conform NYSE Rule 111 to the NYSE's proposal of registered competitive market makers as a new class of floor members in File No. SR-NYSE-78-24.[1] That class was approved today by the Commission on a temporary basis.[2]

Notice of the proposed rule change together with their terms of substance was given by publication of a Commission release (Securities Exchange Act Release No. 14696 (April 21, 1978)) and by publication in the FEDERAL REGISTER (43 CFR 17889 (April 26, 1978)). Interested persons were invited to submit written data, views and arguments concerning the proposed rule change. The Commission has not received any comments on the proposed rule change. On May 1, 1978, the NYSE filed an amendment which (i) withdrew technical portions of the proposed rule change relating to bond trading and (ii) clarified the extent of the prohibition of Rule 111.

The Commission finds that the proposed rule change set forth in File No. SR-NYSE-78-26, as amended, specifically the amendments to paragraphs (c), (e), and (f) and supplementary material .10, are 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.

Section 19(b)(2) of the Act permits the Commission to approve a proposed rule change submitted by a self-regulatory organization prior to the thirtieth day after the date of publication of notice of filing thereof if the Commission finds good cause for doing so and publishes its reasons for so finding. The Commission today had approved the proposed rule changes in File No. SR-NYSE-78-24 on an accelerated basis for a number of reasons,[3] including the fact that section 11(a) of the Act became effective today. In view of that action and those reasons, the Commission finds, pursuant to section 19(b)(2) of the Act, that good cause exists to accelerate approval of File No. SR-NYSE-78-26. Nonetheless, commentators are invited to submit written data, views and arguments concerning the proposed rule change in this filing.

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. 78-12427 Filed 5-5-78; 8:45 am]

[8010-01]

[File No. 500-1]

NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO.

Notice of Suspension of Trading

APRIL 18, 1978.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of New York, New Haven & Hartford Railroad Co. being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 9:30 a.m. e.s.t. on April 18, 1978 through April 27, 1978.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-12425 Filed 5-5-78; 8:45 am]

[8010-01]

[Release No. 20527; (70-6111); (31-606)]

NORTHERN STATES POWER CO.

Notice of Proposed Acquisition by Exempt Holding Company of Stock of Electric and Gas Utility and Application for Exemption Under Section 3(a)

MAY 1, 1978.

Notice is hereby given that Northern States Power Co. ("Northern States"), a holding company, has filed an application-declaration on behalf of itself and its subsidiaries as such designating sections 9 and 10 of the Public Utility Holding Company Act of 1935 ("Act") as applicable to the proposed transactions and requesting an exemption under section 3(a)(2) of the Act. All interested parties are referred to the application-declaration which is summarized below for a complete statement of the pertinent facts.

Northern States, a Minnesota corporation, is a utility company and also a holding company, as defined in section 2(a)(7) of the Act. Its wholly owned subsidiary, Northern States Power Co. ("Wisconsin"), is a Wisconsin corporation. Northern States is presently exempt pursuant to an order of this Commission under section 3(a)(2) of the Act. *In the Matter of Northern States Power Company,* 36 SEC 1 (1954).

Northern States is engaged predominantly in the generation, transmission, distribution and sale of electricity in the States of Minnesota, North Dakota, and South Dakota and the distribution and in the sale at retail of natural gas in the States of Minnesota and North Dakota. Its wholly-owned subsidiary, provides similar utility services in the State of Wisconsin. Northern States has two wholly-owned nonutility subsidiaries, Cormorant Corp., a Montana corporation, which holds interests in fuel resources, and United Power & Land Co., a Minnesota corporation, which holds nonutility properties of a relatively nominal value. For the year ended December 31, 1976, consolidated operating revenues of Northern States and Wisconsin from electric operations totaled $643.8 million and revenues from gas operations totaled $118.9 million. On December 31, 1976, Northern States and Wisconsin furnished electric service as an integrated electric utility system in a 40,000 square mile service area to 990,000 customers in 631 communities, and gas service to 248,000 customers in 78 communities located in the same general territory. For the year ended December 31, 1976, the Northern States system derived approximately 84 percent of its operating revenues from electric service, 15 percent from gas service and 1 percent from heating and telephone service.

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[1] Securities Exchange Act Release No. 14694 (April 21, 1978), 43 FR 17890 (April 26, 1978).

[2] Securities Exchange Act Release No. 14713 (May 1, 1978).

[3] See Securities Exchange Act Release No. 14718 (May 1, 1978).

Northern States proposes to acquire the shares of outstanding Common Stock, $10 par value, of Lake Superior District Power Co. ("Lake Superior"), a Wisconsin corporation, through an offer to stockholders of Lake Superior to exchange 0.48 shares of Northern States common stock, $5 par value, for each share of Lake Superior common stock.

Lake Superior is engaged primarily in the generation, transmission, distribution and sale of electric energy and the distribution and sale at retail of natural gas service in northern Wisconsin and the Upper Peninsula of Michigan. For the year ended December 31, 1976, operating revenues of Lake Superior from electric operations totaled $18.8 million and revenues from gas operations totaled $4.2 million. On December 31, 1976, Lake Superior served a territory with a population of about 125,000 in an 8,600 square mile area. It furnished electric service to 37,000 customers in 15 counties in Wisconsin and Michigan, gas service to about 8,000 customers in 22 communities in the same area, and water service in one community in Wisconsin. For the year ended December 31, 1976, Lake Superior derived approximately 81.5 percent of its operating revenues from electric service, 18.3 percent from gas service and 0.2 percent from water service.

Lake Superior, Northern States and Wisconsin are parties with other power suppliers to the Mid-Continent Area Power Pool Agreement pursuant to which parties may exchange power and energy under schedules designed in the pool agreement for various purposes, including improved operations, emergency and economy. For the purposes of these interchanges, additional transmission facilities in the area are available for interchange among these companies. Lake Superior's major current source of bulk electric power supply, in addition to its own generation facilities, is Minnesota Power & Light Co., under an agreement which expires in November 1980. In anticipation of the expiration of that contract, Lake Superior is contemplating the construction of transmission facilities for additional interconnections with major bulk transmission facilities in northern and central Wisconsin. Lake Superior, Northern States, Wisconsin and other utilities in the area have agreed to the joint ownership of a nuclear generating plant to be located in the central portion of the state near Durand, Wis. Lake Superior and other power suppliers, in response to invitations by Northern States, have also been reviewing the possibility of joining with Northern States in the joint ownership of other planned generation units. It is stated that the inclusion of Lake Superior in the Northern States system will provide improved coordination of planning, construction and maintenance of electric facilities and a reduction in administrative costs associated with generation and transmission facilities.

Northern States and Lake Superior have entered into an Agreement dated December 29, 1977 (the "Agreement") setting forth the terms and conditions of the proposed exchange offer. It provides that the exchange offer will be made during an initial period of approximately 30 days, subject to extension by Northern States for an additional period or periods. Northern States will not extend the exchange offer beyond 60 days from the initial date without approval by the Commission. The deposits of shares of Lake Superior Common Stock will be irrevocable during the initial period and any authorized extension or extensions thereof. Northern States will declare the exchange offer effective when shares of Lake Superior Common Stock equal to 80 percent of all of the voting securities of all Lake Superior stock outstanding are tendered prior to the expiration of the offer period and if all other conditions of the proposed exchange have been met. The offer is also subject to other conditions, among them, a favorable tax ruling and all regulatory approvals.

Northern States recognizes that if it does not acquire all of the outstanding common stock of Lake Superior the resulting publicly-held minority interest in such stock will create an unduly or unnecessarily complicated corporate structure or an inequitable distribution of voting power, contrary to the standards of section 11(b)(2) of the Act. Therefore, if less than all shares of Lake Superior common stock are acquired pursuant to the exchange offer, Northern States will register with the Commission in accordance with Section 5(a) of the Act for the limited purpose of promptly submitting a plan to eliminate the minority publicly-held shares of Lake Superior common stock through an exchange for Northern States Common Stock.

Northern States represents that it intends to operate Lake Superior as a separate unit, and that it is its present intention to retain all personnel currently employed by Lake Superior. Northern States expects that substantially all officers and all but one of the directors of Lake Superior will remain in their current positions.

A statement of the fees and expenses to be incurred in connection with the proposed transactions will be filed by amendment. The Minnesota Public Service Commission has jurisdiction over Northern States' capital structure, including approval of the issuance of Northern States securities required for the acquisition. No other State or Federal commission other than this Commission has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than May 25, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he disires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-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. 78-12428 Filed 5-5-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

PRIVACY ACT OF 1974

Revised System of Records

In 43 FR 8605 (March 2, 1978) a notice of a proposed revised system of records was published. Any person interested in commenting on the proposed revision was given 30 days to submit comments in writing.

Since no comments were received, this system of records is submitted herewith as the Agency's official system and is effective May 3, 1978.

A. VERNON WEAVER,
Administrator.

SBA285

System name:

Official Travel Files—SBA285.

System location:

Central Office, at address listed in Appendix A, Federal Records Centers, at addresses listed in Appendix B.[1]

Categories of individuals covered by the system:

SBA employees.

Categories of records in the system:

Files include Travel Voucher and Applications for Advance of Funds submitted by each employee.

Authority for maintenance of the system:

5 U.S.C. 301, 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are reviewed by the General Accounting Office in the course of an audit of the Agency.

In the event that a system of records maintained by this Agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulatory rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigation or prosecution of such violation or charged with enforcement or implementing the statute, rule, regulation or order issued pursuant thereto.

Storage:

Records are kept in file folders.

Retrievability:

Records are indexed by employee name and social security number.

Safeguards:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is utilized to prevent unauthorized disclosure.

Retention and disposal:

Records are maintained for two years after the end of a fiscal year, or until a GAO audit. Records are then transferred to a Federal Records Center, where they will be disposed of 10 years after the end of the fiscal year in which the records were compiled.

Systems manager(s) and address:

Privacy Act Officer. See Appendix A for address.

[1] Referenced appendixes A and B are included in 42 FR 48794.

Notification procedures:

An individual may inquire as to whether the system contains a record pertaining to him or her by addressing a request in person or in writing to the Privacy Act Officer, at the address contained in Appendix A.

Record access procedures:

In response to a request by an individual to determine whether the system contains a record pertaining to him or her, the Privacy Act Officer will set forth the procedures for gaining access to these records. If there is no record of the individual, he or she will be so advises.

Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Contesting record procedures:

Individuals desiring to contest or amend information maintained in the system should direct their rquest to the official listed in the above paragraph, stating the reasons for contesting it and the proposed amendment to the information sought.

Record source categories:

Travel Vouchers and Applications for Advance of Funds submitted by employees.

[FR Doc. 78-12437 Filed 5-5-78; 8:45 am]

[1505-01]

[Declaration of Disaster Loan Area No. 1459]

IDAHO

Declaration of Loan Disaster Area

Correction

In the FEDERAL REGISTER for Monday, May 1, 1978, the date, signature and file line for the document above was inadvertently published on page 18611 of that issue and should be transferred to page 18617 where the document above appears. The following information should be added:

"Dated: April 21, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-11370 Filed 4-28-78; 8:45 am]"

[4710-07]

DEPARTMENT OF STATE

[Public Notice CM-8/55]

SHIPPING COORDINATING COMMITTEE, COMMITTEE ON OCEAN DUMPING

Meeting

The Committee on Ocean Dumping, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 10 a.m. on Tuesday, June 6, 1978, in the Administrator's Conference Room, 11th floor, West Tower, Environmental Protection Agency, 401 M Street SW., Washington, D.C.

The meeting will review United States preparations for the following three intersessional meetings to be held in London:

June 21-23—Joint Ad Hoc Group on Incineration at Sea;
June 26-30—Ad Hoc Scientific Group on Ocean Dumping; and
June 26-30—Ad Hoc Group of Legal Experts on Dumping.

Requests for further information should be directed to Mrs. Norma Hughes, Oil and Special Materials Control Division (WH-548), Environmental Protection Agency, Washington, D.C. 20460. Mrs. Hughes may be reached by telephone on 202-245-3051.

The Chairman will entertain comments from the public as time permits.

Dated: April 27, 1978.

RICHARD K. BANK,
Chairman, Shipping Coordinating Committee.

[FR Doc. 78-12388 Filed 5-5-78; 8:45 am]

[4710-08]

[Public Notice CM-8/56]

STUDY GROUP 1 OF THE U.S. ORGANIZATION FOR THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT)

Meeting

The Department of State announces that Study Group 1 of the U.S. CCITT National Committee will meet on June 1, 1978, at 10 a.m. in Room 511 of the Federal Communications Commission, 1919 M Street NW., Washington, D.C. This Study Group deals with U.S. Government regulatory aspects of international telegraph and telephone operations and tariffs.

The Committee will discuss international telecommunications questions relating to telegraph and telex services, and maritime services, in order to develop U.S. positions to be taken at an international CCITT Study Group I meeting to be held in June 1978, in Munich, Germany.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Dated: April 28, 1978.

ARTHUR L. FREEMAN,
Chairman, U.S. CCITT National Committee.

[FR Doc. 78-12387 Filed 5-5-78; 8:45 am]

[4710-07]

ADVISORY COMMITTEE ON THE 1979 WORLD ADMINISTRATIVE RADIO CONFERENCE

Establishment of an Advisory Committee

In accordance with Pub. L. 92-463 the Department of State has requested and received approval from the General Services Administration to establish an Advisory Committee on the 1979 World Administrative Radio Conference (WARC), it having been determined that the establishment of the Committee would be in the public interest in connection with the performance of duties imposed on the Department by law.

The United States has a substantial interest in the outcome of the 1979 WARC. The Department of State has formed an initial delegation group to the 1979 WARC made up of Government experts. The initial delegation group will later be expanded to include persons from the private sector. Given the diverse and technical issues to be addressed, the Department will need not only the expertise available from Government officials but also substantial advice from the private sector.

The Committee will have a broad and balanced membership, and will include representatives of industry, public interest groups and others with an interest in the WARC.

The Committee will assist in the formulation of positions for the Conference. It will report to its Chairman, who also serves as Chairman of the U.S. Delegation to the WARC; on occasion it will consult with the Delegation itself.

The Committee will terminate not later than December 15, 1979.

In accordance with section 6 of OMB Circular No. A-63 (Revised), the Committee Management Officer, General Services Administration, has waived the requirement for a 15-day interval between the publication of this Notice and the filing of the Committee's Charter. The Committee will become effective on May 10, 1978.

A copy of the Charter of the Advisory Committee on the 1979 World Administrative Radio Conference will be deposited with the Library of Congress (Federal Advisory Committee Desk, Federal Documents Section, Exchange and Gifts Division), Washington, D.C.

Dated: May 3, 1978.

GORDON L. HUFFCUTT,
Acting Executive Secretary, Ad Interim.

[FR Doc. 78-12436 Filed 5-5-78; 8:45 am]

[4710-02]

Agency for International Development

HOUSING GUARANTIES

Prescription of Rate

Pursuant to section 223(f) of the Foreign Assistance Act of 1961 as amended ("the Act"), contracts of guaranty to be entered into for loan investments in housing under section 221 and section 222 of the Act will be subject to the following restriction:

The maximum allowable rate of interest to an eligible U.S. investor shall not be in excess of 1 percent (1%) per annum above the current rate of interest applicable to housing mortgages insured by the Department of Housing and Urban Development that is in effect at the time AID approves the borrower's selection of an investor's proposal.

This prescription of rate is effective as of April 11, 1978, the date approved by Mr. Sander Levin, Assistant Administrator, Bureau for Development Support.

Dated: April 26, 1978.

PETER KIM,
Director, Office of Housing.

[FR Doc. 78-12379 Filed 5-5-78; 8:45 am]

[4910-14]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 78-64]

BLACKWATER RIVER IN SEABROOK, N.H.

Proposed Amendment of a Permit to Modify a Bridge Across

The Commandant has authorized a public hearing to be held by the Commander, First Coast Guard District, at Seabrook Town Building, on Collins Street, Seabrook, N.H., June 8, 1978, at 7 p.m. The purpose of the hearing is to consider the permit application from Frank W. Hake, Inc., to reinforce the New Hampshire Route 286 highway bridge across the Blackwater River, at Seabrook, N.H., for approximately five years.

This reinforcement is deemed necessary to increase the load bearing capacity to accommodate extraordinarily heavy vehicles transporting components of the Seabrook Nuclear Powered Electric Generating Plant now under construction at Seabrook, N.H. The reinforcement of the bridge will be accomplished by placing steel beams under the beams presently supporting the bridge surface. The steel beams will reduce the vertical clearance under the bridge from 4 feet to 0.5 feet (MHW) and 9 feet (MLW). The determination of whether a Coast Guard bridge permit will be issued must rest primarily on the project's impact on navigation and the environment. Bridge permit actions, such as approval of minor modifications having no significant forseeable impacts on navigation and the environment, under consideration by the Coast Guard are classified as nonmajor federal actions for the purposes of the National Environmental Policy Act of 1969. Under criteria published by the Coast Guard in the FEDERAL REGISTER, Volume 41, No. 128, July 1, 1976, this proposal has been tentatively classified as a non-major federal action. It appears that the decision on this permit application will not alter the planned construction of the power plant.

The Nuclear Regulatory Commission is the lead Federal agency for preparation of the Environmental Impact Statement (EIS) for the power plant. The EIS is required by the National Environmental Policy Act. An EIS was filed with the Council on Environmental Quality in December 1974.

Preliminary information indicates that an alternative route is available. Comments on the feasibility of using an alternative route are desired.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement, and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the Commander (obr), First Coast Guard District, 150 Causeway Street, Boston, Mass. 02114, by June 2, 1978. Such notification should include the approximate time required to make the presentation. Comments previously submitted are a matter of record and need not be resubmitted at the hearing. Speakers are encouraged to provide written copies of their oral statements to the hearing officer at the time of the hearing. Those wishing to make written comments only may submit those comments at the hearing, or to the Commander (obr), First Coast Guard District. Comments must be received by June 19, 1978. Written comments will be available for public inspection in the office of the Commander (obr), First Coast Guard District. A transcript of the hearing will also be available for inspection approximately 30 days after the hearing.

All comments, oral and written, will be considered before a final determination is made of the subject application by the Commandant, U.S. Coast Guard, Washington, D.C. 20590.

(Section 502, 60 Stat. 847, as amended: 33 U.S.C. 525, 49 U.S.C. 1655(g)(6)(c); 49 CFR 1.46(c)(10).)

F. P. SCHUBERT,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 78-12449 Filed 5-5-78; 8:45 am]

[4910-13]

Federal Aviation Administration

RADIO TECHNICAL COMMISSION FOR AERONAUTICS (RTCA) SEPARATION STUDY REVIEW GROUP

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the RTCA Separation Study Review Group to be held May 31 and June 1, 1978, RTCA Conference Room 261, 1717 H Street NW., Washington, D.C., commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Comments; (2) Approval of Minutes of Second Meeting held November 1-2, 1977; (3) Status Report on FAA Separation/Navigation Standards Program; (4) Report of Actions Resulting from second Meeting; (5) Preliminary Report and Discussion on Initial Flight Inspection Test Results; (6) Discussion of Preliminary Data Collected on performance on VOR Routes in Cleveland, Memphis, and Albuquerque; (7) Discussion of Progress on Data Analysis Methods; and (8) General Discussion.

Attendance is open to the interested public but, limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtained from, RTCA Secretariat, 1717 H Street NW., Washington, D.C. 20006, 202-296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on May 1, 1978.

KARL F. BIERACH,
Designated Officer.

[FR Doc. 78-12417 Filed 5-5-78; 8:45 am]

[1505-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 32TA]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-7327, appearing at page 11641 in the issue for Monday, March 20, 1978; on page 11645, third column, second line from top, the word *"common"* should read *"contract"* in reference to Motor Carrier No. 144259TA.

[1505-01]

[Notice No. 35TA]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-7746, appearing at page 12170 in the issue for Thursday, March 23, 1978; on page 12173, third column, eighth line of No. MC 143378 (Sub-No. 5TA), the word *"contract"* should read *"common"*.

[1505-01]

[Notice No. 60]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-10848, appearing at page 17093 in the issue for Friday, April 21, 1978; on page 17094, second column, "No. MC 94265 (Sub-No. 246TA)" should read "No. MC 94265 (Sub-No. 246TA)".

[7035-01]

[Notice No. 654]

ASSIGNMENT OF HEARINGS

MAY 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.

AB 1 (Sub-No. 57), Chicago and North Western Transportation Co. Abandonment Between Lake Crystal and Winnebago in Blue Earth and Faribault Counties, MN, is now assigned for hearing July 10, 1978 (1 week) at Winnebago, MN, at a location to be later designated.

AB 7 (Sub-No. 43), Chicago, Milwaukee, St. Paul & Pacific Railroad Co. Abandonment near Paralta and Hopkinton, in Linn, Jones, and Delaware Counties, IA, is now assigned for hearing July 17, 1978 (1 week) at Anamosa, IA, at a location to be later designated.

MC 113651 (Sub-No. 244), Indiana Refrigerated Lines, Inc., now assigned May 22, 1978 at New York, NY, will be held in Room E-2222, 26 Federal Plaza, Federal Building.

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 assigned June 5, 1978 at Gates, NC, is postponed and reassigned to June 6, 1978 (4 days) at the Gates County New Courthouse, Gatesville, NC.

MC 82492 (Sub-No. 145), Michigan & Nebraska Transit Co., Inc., now assigned July 10, 1978 at Washington, DC, is postponed indefinitely.

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

[FR Doc. 78-12468 Filed 5-5-78; 8:45 am]

[7035-01]

[Notice No. 655]

ASSIGNMENT OF HEARINGS

Correction

MAY 3, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prespective 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 143945 (Sub-No. 3), Artransport, Inc., was incorrectly shown in the FEDERAL REGISTER of May 1, 1978 as assigned for hearing on June 26, 1978. This information was published in error. However, MC 143945 (Sub-No. 3), Artransport, Inc. is now assigned for prehearing conference on May 31, 1978 at the Offices of the Interstate Commerce Commission, Washington, D.C.

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

[FR Doc. 78-12467 Filed 5-5-78; 8:45 am]

[7035-01]

[Ex Parte No. 241; 30th Rev. Exemption No. 12]

EXEMPTION UNDER MANDATORY CAR SERVICE RULES

It appearing, That the railroads named herein own numerous plain boxcars; that under present conditions there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipment to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, ICC-RER No. 407, issued by W. J. Trezse, or successive issues thereof, as having mechanical designation "XM", and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b). (See note.)

Atlantic & Western Railway, Reporting Marks: ATW.
Chicago & Illinois Midland Railway Co., Reporting Marks: CIM.
Fonda, Johnstown & Gloversville Railroad Co., Reporting Marks: FJG.
Hartford and Slocomb Railroad Co., Reporting Marks: HS.
*Hillsdale County Railway Co. Inc., Reporting Marks: HCRC.
Lackawaxen & Stourbridge Railroad Corp., Reporting Marks: LASB.
Louisiana Midland Railway Co., Reporting Marks: LOAM.
Maryland & Pennsylvania Railroad Co., Reporting Marks: MPA.
Pickens Railroad Co., Reporting Marks: PICK.
Roscoe, Snyder & Pacific Railway Co., Reporting Marks: RSP.
Wellsville, Addison & Galeton Railroad Corp., Reporting Marks: WAG.

NOTE.—Does not include boxcars with mechanical designation "XMI."

Effective April 30, 1978, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., April 27, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-12471 Filed 5-5-78; 8:45 am]

[7035-01]

[Ex. Parte No. 241; Rev. Exemption No. 148]

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Exemption Under Mandatory Car Service Rules

It appearing, That there is an emergency movement of military supplies from Crane, Ind., to Earle, N.J.; that the originating carrier has insufficient system cars of suitable dimensions immediately available for loading with this traffic; that sufficient cars of other ownerships having suitable dimensions are available on the lines of the originating carrier and on its connections and that compliance with Car Service Rules 1 and 2 would prevent the timely assembly and use of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, the Car Service Division of the Association of American Railroads is authorized to direct the movement to the Chicago, Milwaukee, St. Paul & Pacific Railroad Co. (Milwaukee), the railroads designated by the Car Service Division are authorized to move to, and the Milwaukee is authorized to accept, assemble, and load not to exceed 175 empty plain boxcars with military supplies from Crane, Ind., to Earle, N.J., regardless of the provisions of Car Service Rules 1 and 2.

It is further ordered, That this exemption shall constitute a modification of the provisions of section (a)(2)(ii) of Service Order No. 1309, and of all provisions of Revised Service Order No. 1301 and of Service Order No. 1306.

Effective April 25, 1978.
Expires May 31, 1978.

Issued at Washington, D.C., April 21, 1974.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 78-12472 Filed 5-5-78; 8:45 am]

[7035-01]

[Corrected S.O. No. 1304; Exception No. 4]

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Granting of Exception

Exception under section (a), paragraph (6), corrected Service Order No. 1304.

The Chicago, Milwaukee, St. Paul & Pacific Railroad Co. (Milw), has been using eighteen (18) jumbo covered hoppers supplied by another railroad in unit-grain service. These cars have been recalled by the car owners because of increased demands for cars by its shippers. the Milw has requested authority to substitute eighteen (18) of its own cars for the foreign cars ordered home in order to continue providing the present level of unit-grain services to the users of such trains. The addition of these eighteen cars will increase Milw's ratio of cars in unit-grain-train service from its reported level of 11.6 percent of ownership to 12.2 percent of ownership, a ratio substantially below the 20.0 percent level permitted by the order.

It is ordered, That, pursuant to the authority vested in the Railroad Service Board by section (a)(6) of Corrected Service No. 1304, the Chicago, Milwaukee, St. Paul & Pacific Railroad Co. is authorized to operate eighteen (18) additional jumbo covered hopper cars in unit-grain-train service to replace a like number of foreign cars withdrawn by the car ower regardless of the provisions of section (a)(5) of the order.

Effective April 18, 1978.

Issued at Washington, D.C., April 18, 1978.

JOEL E. BURNS,
Chairman,
Railroad Service Board.

[FR Doc. 78-12474 Filed 5-5-78; 8:45 am]

[7035-01]

[Corrected I.C.C. Order No. 54 Under R.S.O. No. 1252]

CHICAGO, ST. PAUL AND PACIFIC RAILROAD CO.

Rerouting of Traffic

In the opinion of Robert S. Turkington, Agent, the Chicago, Milwaukee, St. Paul and Pacific Railroad Co. is unable to transport promptly all traffic offered for movement over its lines between Savanna, Ill., and Kansas City, Mo., because of track conditions and shortages of locomotives.

It is ordered, That:

(a) *Rerouting traffic.* The Chicago, Milwaukee, St. Paul and Pacific Railroad Co. being unable to transport promptly all traffic offered for movement over its lines between Savanna, Ill., and Kansas City, Mo., because of track conditions and shortages of locomotives that line is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure

*Addition.

of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 4 p.m., April 4, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., April 30, 1978, unless otherwise modified, changed, or suspended.

It is further ordered, That this order 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 it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., April 4, 1978.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 78-12470 Filed 5-5-78; 8:45 am]

[7035-01]

[Rev. SO 1322; Exception 5]

ILLINOIS CENTRAL GULF RAILROAD CO.

Granting of Exception

By the provisions of Revised Service Order No. 1322 the Illinois Central Gulf Railroad Co. (ICG) is required to use seventy (70) percent of its serviceable ownership of jumbo covered hoppers for transporting shipments of raw grain. A review of the normal use of these cars by that line discloses that it requires the use of a large portion of its fleet for transporting grain, soybean and cottonseed products from the numerous processors served by its line in Iowa, Illinois, Kentucky, Tennessee, and Mississippi. The involvement of the ICG in the western grain traffic is confined to its Iowa division and does not directly affect the operations of other portions of its system. The use of seventy (70) percent of its serviceable fleet of jumbo covered hopper cars for transporting shipments of grain will result in undue hardship on other shippers normally using a portion of these cars. Accordingly, it is the opinion of the Railroad Service Board that an exception to the basic requirements of Revised Service Order No. 1322 should be granted to the ICG.

It is ordered, That:

Pursuant to the authority vested in me by section (f) of Revised Service Order No. 1322, the Illinois Central Gulf Railroad Co. is directed to assign to grain service at least forty (40) percent of its ownership of jumbo covered hoppers as defined in section (a)(2) of Revised Service Order No. 1322, regardless of the provisions of section (c)(1) of the order and regardless of the provisions of Exception No. 1 to the order.

The additional cars made available by this exception for transporting shipments other than grain shall be used for transporting shipments of grain products, soybean products or cottonseed products.

Effective 12:01 a.m., April 20, 1978.

Issued at Washington, D.C., April 20, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Chairman, Railroad Service Board.

[FR Doc. 78-12473 Filed 5-5-78; 8:45 am]

[7035-01]

[Finance Docket No. 28740]

ILLINOIS CENTRAL GULF RAILROAD CO.

Notice of Application To Acquire and Operate—A Line of Railroad in Tishomingo County, Miss.

Illinois Central Gulf Railroad Co., 233 North Michigan Avenue, Chicago, Ill. 60601, represented by Richard M. Kamowski, Attorney, Illinois Central Gulf Railroad Co., 233 North Michigan Avenue, Chicago, Ill. 60601, hereby give notice that on the 14th day of April, 1978, it filed with the Interstate Commerce Commission at Washington, D.C., an application under section 1(18) of the Interstate Commerce Act, for a certificate of public convenience and necessity to acquire and operate a line of railroad in Tishomingo County, Miss., which application is assigned Finance Docket No. 28740.

Applicant proposes to acquire and operate a line of railroad to be constructed by the United States Army Corps of Engineers at the Corps' expense. The Tennessee-Tombigbee Waterway Project's route requires applicant to relocate a portion of its Jackson, Tenn., to Birmingham, Ala., main line. Applicant has filed an application (Docket No. AB-43 (Sub-No. 44)) to abandon this portion of its line and intends to exchange the abandoned line for the new line of railroad, which is roughly parallel to the existing line. The line to be abandoned will be operated until the new line is available for use so that operations over applicant's Jackson, Tenn., to Birmingham, Ala., main line will not be interrupted. The line will be located entirely within Tishomingo County, Miss.

The line's route is northwest-southeast, having one terminus near Holts Spur, Miss., and extending southeast to a point outside of Paden, Miss. There are no incorporated cities or villages on this route. The total track length will be approximately 9.32 miles.

In the opinion of the applicant, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969,* 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra* at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C. 20423, and the aforementioned counsel for applicant, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

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

[FR Doc. 78-12469 Filed 5-5-78; 8:45 am]

[7035-01]

[Notice No. 39]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarded transfer applications filed under sections 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 within 30 days after the date of this publication. 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 form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC-F-C 77577, filed March 13, 1978. Transferee: GLADES MOTOR LINES, INC., 406 North Morgan Street, Tampa, FL 33602. Transferor: Tamiami Trail Tours, Inc., 525 Madison Street, Tampa, FL 33601. Applicant's representative: Gregory A. Presnell, P.O. Box 231, Orlando, FL 32802. Authority sought for purchase of a portion of the operating rights set forth in certificate No. MC 74761, issued August 22, 1956, and a portion of certificate No. MC-74761 (Sub-No. 11), issued July 7, 1967, as follows: *Passengers, baggage, and express,* over specified regular routes, between Tampa, FL, and Punta Gorda, FL, between Punta Gorda, FL, and Fort Myers, FL, between Fort Myers, FL, and West Palm Beach, FL, and between LaBelle, FL, and the junction of U.S. Hwy 27 and FL Hwy 80, intermediate points to be served on all four routes. Transferee holds no Commission authority and does not seek section 210a(b) authority.

No. MC-F-C 77623, filed April 11, 1978. Transferee: INTERMODAL CONTAINER EXPRESS, INC., 6076 County Road 11, Rising Sun, OH 43457. Transferor: Interstate Warehousing Corp., 6076 County Road 11, Rising Sun, OH 43457. Applicants' representative: Kathleen L. Maher, 100 East Broad Street, Columbus, OH 43215. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in certificate No. MC 136230, issued November 14, 1977, as follows: *General commodities,* with exceptions, between Jacksonville, FL, on the one hand, and, on the other, points in FL and GA; *empty containers, trailers, and trailer chassis,* between points in FL and GA. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-C 77627, filed April 18, 1978. Transferee: HENRY V. RABOUIN, INC., P.O. Box 204, Pittsfield, MA 01201. Transferor: Henry V. Rabouin (same address as transferee). Applicants' representative: Sherwood Guernsey II, 57 Wendell Avenue, Pittsfield, MA 01201. Authority sought for purchase by transferee of a portion of the operating rights of transferor as set forth in certificate No. MC 30618, issued March 21, 1957, and all of the operating rights of transferor as set forth in certificate No. MC 30618 (Sub-No. 7), issued October 15, 1973, as follows: *Various commodities,* from, to, and between specified points in MA, NY, CT, VT, NJ, NH, and RI; and *dry animal feed ingredients,* from Troy, NY, to points in ME, NH, VT, MA, RI, and CT. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

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

[FR Doc. 78-12466 Filed 5-5-78; 8:45 am]

[7035-01]

[Notice No. 40]

MOTOR CARRIER TRANSFER PROCEEDINGS

May 8, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and transfer rules, 49 CFR, Part 1132:

No. MC-FC-77646. By application filed April 28, 1978, ALLIED TRANSPORTATION SERVICES, INC., P.O. Box 7424, Shawnee Mission, KS 66207, seeks temporary authority to transfer the operating rights of Milk Producers Marketing Co., 2nd and Turnpike Road, Lawrence, KS 66044, under section 210a(b). The transfer to Allied Transportation Services, Inc., of the operating rights of Milk Producers Marketing Co. is presently pending.

By the Commission.

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

[FR Doc. 78-12465 Filed 5-5-78; 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. 91-409), 5.U.S.C. 552b(e)(3).

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[6355-01]

1

CONSUMER SAFETY COMMISSION.

LOCATION: Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

TIME AND DATE: April 5, 1978, 9:30 a.m. and April 6, 1978, 2 p.m.

MATTERS TO BE CONSIDERED: Commission meetings; April 5, 1978 and April 6, 1978. Third Floor Hearing Room 1111 18th Street NW., Washington, D.C.

REVISED AGENDA[1]

APRIL 5, 1978

Open to the Public, 9:30 a.m.

Mid-year review

Following Mid-Year Review briefings on March 13-15, and preliminary decision meetings on March 24 and March 27, the Commission will continue to consider the decision-making process on the following general matters:

Adjustments to the fiscal year 1978 operating plan.
Guidance to staff for the fiscal year 1979 operating plan.
Guidance to staff for the zero-based budgeting exercise for fiscal year 1980, 1981, and 1982.
Priority-setting for the next 18 months.
General guidance to staff in allocating resources within specific activities.

Closed to the public, 2 p.m.

A discussion of a contractor's report which contains data that has yet to be fully evaluated.

APRIL 6, 1978

An afternoon session on the Mid-Year Review if one is needed.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secetary, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, telephone 202-634-7700.

[S-962-78 Filed 5-4-78; 3.34 pm]

[1]Agenda revised on April 3, 1978 to change the time for staring April 5 meeting from 10 a.m. to 9:30 a.m., and to add a closed item to the Agenda for April 5, 1978.

[6355-01]

2

CONSUMER PRODUCT SAFETY COMMISSION.

LOCATION: Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

TIME AND DATE: April 12, 1978, 9:30 a.m.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Commission briefing; Wednesday, April 12, 1978, 9:30 a.m. Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

AGENDA

OPEN TO THE PUBLIC

1. *Briefing on first-aid instructions for inducing vomiting*—In June 1977, the Commission proposed a statement of policy on this matter. At this briefing, the staff and Commission will discuss issues related to final Commission approval and issuance of the policy statement.

2. *Briefing on carpet and rug flammability standards*—At this briefing, the staff will seek guidance from the Commission on options for future action with regard to the flammability standards for carpets (FF 1-70) and for small carpets and rugs (FF 2-70), including sampling plans.

Agenda approved March 31, 1978.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, telephone 202-634-7700.

[S-963-78 Filed 5-4-78; 3:34 pm]

[6355-01]

3

CONSUMER PRODUCT SAFETY COMMISSION.

LOCATION: Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

TIME AND DATE: April 13, 1978, 9:30 a.m. and 2 p.m.

STATUS: Partly open (a.m.) and partly closed (p.m.).

MATTERS TO BE CONSIDERED: Commission meeting; Thursday, April 13, 1978, 9:30 a.m. and 2 p.m. Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

AGENDA

OPEN TO THE PUBLIC, 9:30 A.M.

1. *Carcinogen policy*—The Commission will consider a proposed policy containing procedural guidelines describing how CPSC will proceed when presented with information on a substance that may present a potential carcinogenic hazard if present in a consumer product. The staff and Commission discussed this matter at briefings on January 18 and February 16, 1978.

2. *Final rule amending PPPA exemptions for certain aspirin-containing preparations*—In April, 1977, the Commission issued an interim rule on which comment was sought, amending the exemption from child-resistant packaging requirements certain aspirin-containing preparations. At this meeting, the Commission will consider issuing a final amendment increasing the exempted products to contain up to 13 grains of aspirin, rather than 10 grains.

3. *Final rule amending PPPA packaging requirements for certain iron-containing preparations*—In June, 1976, the Commission issued regulations requiring child-resistant packaging for certain preparations containing 500 mg or more of elemental iron per package. The regulation became effective in June, 1977. At this meeting, the Commission will consider an amendment to that rule lowering the requirement to those preparations containing 250 mg or more of elemental iron per package, as proposed in April 1977.

4. *Recommendation to close case and not pursue timeliness case: Estes Industries model rocket launch system, ID 77-38*—The staff has determined that there is insufficient information to support a belief that this product presents a substantial product hazard, and has recommended that the Commission close the case and not pursue a timeliness case.

CLOSED TO THE PUBLIC, 2 P.M.

5. *Recommendation to Initiate Adjudication: BCMI No. 1837* (OS No. 516)—The staff has recommended that the Commis-

sion initiate adjudication in this Flammable Fabrics Act case involving a mattress manufacturer, or alternatively, close the case.

6. *Interpretation of CPSA section 4(g)(2)*—The Commission will consider a former employee's request for an interpretation of post-employment restrictions in section 4(g)(2) of the Consumer Product Safety Act.

Agenda approved March 31, 1978.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, telephone 202-634-7700.

[S-964-78 Filed 5-4-78; 3:34 pm]

[6355-01]

4

CONSUMER PRODUCT SAFETY COMMISSION.

LOCATION: Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

TIME AND DATE: April 20, 1978, 2 p.m.

STATUS: Partly open, partly closed.

MATTERS TO BE CONSIDERED: Commission meeting; Thursday, April 20, 1978, 2 p.m. Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

REVISED AGENDA[1]

OPEN TO THE PUBLIC

1. *First-aid instructions for inducing vomiting*—The Commission will consider approval and issuance of a policy statement on this matter, which it proposed in June, 1977. The Commission and staff discussed the issue at the April 12, 1978 briefing.

2. *Miniature Christmas tree lights*—The Commission will decide on publication of a proposed safety standard for miniature Christmas tree lights. At previous meetings, on March 23 and March 30, 1978, the Commission and staff discussed issues related to the recommended safety standard which the National Consumers League developed under the "offeror" process of the Consumer Product Safety Act, and submitted in November, 1977.

CLOSED TO THE PUBLIC

3. *Aluminum wire strategies*—The staff and Commission will discuss implications of, and strategies for Commission action following a recent court decision on this matter.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, telephone 202-634-7700.

[S-965-78 Filed 5-4-78; 3:34 p.m.]

[6355-01]

5

CONSUMER PRODUCT SAFETY COMMISSION.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

TIME AND DATE: April 27, 1978, 9:30 a.m. and 2 p.m.

STATUS: Partly open, partly closed.

MATTERS TO BE CONSIDERED: Commission meeting and briefing; Thursday, April 27, 1978, 9:30 a.m. and 2 p.m., Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

REVISED AGENDA[2]

OPEN TO THE PUBLIC, 9:30 A.M.

1. *Recommendation to accept corrective action plan: Kawasaki Motor Corp., U.S.A.; snowmobiles, ID 77-89*—The staff has recommended that the Commission accept the corrective action plan which Kawasaki has implemented to correct a possible steering failure in certain snowmobiles it manufactures.

2. *Recommendation to accept corrective action plan: U.S. Divers Co.; scuba regulators, ID 78-19*—The staff has recommended that the Commission accept the corrective action plan which U.S. Divers has implemented to correct a possible defect in certain scuba regulators it manufactures.

3. *Recommendation to close possible substantial product hazard case: Westinghouse Electric Corp. gas furnaces, ID 78-48*—Based on its determination that a possible defect in certain furnaces does not pose a substantial product hazard, the staff has recommended that the Commission close this case, and not pursue any timeliness investigation.

4. *Benzene petition*—The Commission will consider a draft proposed ban of products which contain benzene, which it discussed at the April 19 briefing. In May, 1977, the Health Research Group petitioned the Commission to declare benzene a banned hazardous substance because of possible acute and chronic hazards associated with the chemical.

5. *Meeting with Worthington Industries*—Bob Yeoman, Vice President of Worthington Industries, will brief the Commission on a clutch/brake device for rotary power lawn mowers.

6. *Briefing on power lawn mowers*—The staff will brief the Commission on power lawn mowers, specifically the issues of blade contact and the interrelation of blade contact and thrown-objects.

CLOSED TO THE PUBLIC

7. *Aluminim Wire Strategies*—The staff and Commission will discuss implications of, and strategies for Commission action as a result of, a recent court decision on this matter. (Originally scheduled for April 20)

OPEN TO THE PUBLIC, 2 P.M.

8. *Carcinogen Policy*—The Commission will consider a draft carcinogen policy which defines what actions CPSC will take when presented with information that a substance may present a potential cancer hazard if it is present in a consumer product. At the April 13 meeting, the Commission gave guidance to the staff on specific issues in the policy.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, telephone 202-634-7700.

[S-966-78 Filed 5-4-78; 3:34 pm]

[6355-01]

6

CONSUMER PRODUCT SAFETY COMMISSION.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW. Washington, D.C.

TIME AND DATE: May 11, 1978, 9:30 a.m. and 2 p.m.

STATUS: Partly open, partly closed.

MATTERS TO BE CONSIDERED: Commission Meeting and Briefing; Thursday, May 11, 1978, 9:30 a.m. and 2 p.m. Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

AGENDA

OPEN TO THE PUBLIC, 9:30 A.M.

Decision items

1. *Recommendation to accept corrective action plan: Aero Tech Manufacturers, food dehydrator, ID 77-86*—The staff has recommended that the Commission accept the corrective action plan which this firm has implemented, and close the possible substantial product hazard case involving possible shock hazards in certain food dehydrators.

2. *Final regulations establishing safety requirements for baby rattles*—The Commission will consider a final draft version of a regulation it proposed in November, 1977, intended to reduce potential choking and suffocation hazards associated with certain infant rattles.

3. *Matchbook standard and certification*—The Commission will consider issues that arise from a recent court decision on CPSC's safety standard for matchbooks.

4. *Export policy*—The Commission will consider (1) the issue of exportation of TRIS-treated products, and (2) a staff briefing package on developing an export policy under all the acts which the Commission administers.

CLOSED TO THE PUBLIC

5. *Consideration of a post-employment matter under section 4(g)(2) of the Consum-*

[1]Agenda revised April 19, 1978, with the deletion of previous item No. 3, a briefing on sports hazards. The Commission previously deleted, on April 14, consideration of information and education issues raised in the Mid-Year Review. Both matters will be rescheduled at future meetings.

[2]Agenda revised April 21, 1978, with the addition of items 5 and 7. On April 20, the Commission had deleted a previously scheduled-briefing on advertising agency plans. This briefing will be rescheduled.

er Product Safety Act—The staff and Commission will discuss actions related to a request from a former employee for interpretation of the post-employment restrictions imposed by the CPSA.

OPEN TO THE PUBLIC, 2 P.M.

Briefing items

6. *Briefing on advertising agency plans*—Staff from the Office of Communications and CPSC's contract advertising agency will brief the Commission on plans for future information programs.

7. *Briefing on sports hazards*—Staff will brief the Commission on possible future actions to deal with hazards associated with sports and athletic equipment.

Agenda approved April 28, 1978.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Suite 300, 1111 18th Street, NW. Washington, D.C. 20207, Telephone 202-634-7700.

[S-967-789 Filed 5-4-78; 3:34 pm]

[6712-01]

7

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, May 10, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

MATTER TO BE CONSIDERED: Panel presentation in the matter of UHF TV receiver noise figures (Docket No. 21010).

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information, Office, 202-632-7260.

Issued: May 3, 1978.

[S-961-78 Filed 5-4-78; 2:25 p.m.]

[6740-02]

8

FEDERAL ENERGY REGULATORY COMMISSION.

NOTICE OF MEETING

MAY 3, 1978.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., May 10, 1978.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda (NOTE.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

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

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda, however, all public documents may be examined in the office of Public Information.

POWER AGENDA

119TH MEETING—MAY 10, 1978

Regular Meeting—(10 a.m.)

I. Electric Rate Matters

ER-1. Docket No. ER78-310, Union Electric Co.
ER-2. Docket No. ER77-531, Illinois Power Co.
ER-3. Docket No. E-6454, City of Centralia, Wash.
ER-4. Docket No. EL78-6, Illinois Power Co.
ER-5. Docket No. ES78-18, Community Public Service Co.
ER-6. Docket No. ES78-25, Indianapolis Power & Light Co.
ER-7. Docket No. ES78-27, Pacific Power & Light Co.

POWER AGENDA

119TH MEETING—MAY 10, 1978

Regular Meeting

CAP-1. Docket No. ER78-247, Carolina Power & Light Co.
CAP-2. Docket Nos. ER78-300, ER78-303, Northern States Power Co., et al.
CAP-3. Docket No. ER78-251, Pacific Power & Light Co.
CAP-4. Project No. 739, Appalachian Power Co.
CAP-5. (A) *Pennsylvania Power & Light Co.* v. *FERC*, D.C. CIR. No. 78-1270 (Docket Nos. ER78-70 and ER78-71); (B) *Oklahoma Gas and Electric Co.* v. *FERC*, 10th Cir. No. 78-1246 (Docket No. ER77-465).

MISCELLANEOUS AGENDA

119TH MEETING—MAY 10, 1978

Regular Meeting

CAM-1. Narragansett Electric Co.

GAS AGENDA

119TH MEETING—MAY 10, 1978

Regular Meeting

I. Pipeline Rate Matters—A. Pipeline Rates

RP-1(A) Docket No. RP78——, Midwestern Gas Transmission Co. (B) Docket No. RP-78——, East Tennessee Natural Gas Co.

II. Producer Matters—A. Producer Certificates

CI-1. Docket Nos. CI76-633, et al., Tenneco Exploration, Ltd., et al. Docket Nos. CI76-806, et al., Pennzoil Offshore Gas Operators, Inc., et al.
CI-2. Docket Nos. CI77-133 and CI78-144, CIG Exploration, Inc.
CI-3. Reserved.
CI-4. Reserved.

B. Special Relief

CI-5. Docket No. RI78-4, Superior Oil Co.
CI-6. Reserved.
CI-7. Reserved.

C. Producer Rates

CI-8 Docket No. CI74-78, Freeport Oil Co.

III. Pipeline Certificate Matters—A. Pipeline Certificates

CP-1. Docket No. CP78-73, Natural Gas Pipeline Co. of America, Michigan Wisconsin Pipe Line Co., Transcontinental Gas Pipe Line Corp., United Gas Pipe Line Co., Trunkline Gas Co.
CP-2 Docket No. CP78-123, et al., Northwest Alaskan Pipeline Co.
CP-3. Docket Nos. CP75-372 and CP75-373, Tennessee Gas Pipe Line Co., a division of Tenneco, Inc.
CP-4. Docket No. CP76-399, *Southwest Gas Corp.* v. *Northwest Pipeline Corp.*
CP-5. Docket No. CP77-71, Natural Gas Pipeline Co. of America: Docket No. CP77-118, Columbia Transmission Corp.; Columbia Gulf Transmission Co.; Docket No. CP77-125, Texas Gas Transmission Corp.
CP-6. Docket No. CP78-171, Southern Natural Gas Co.; Texas Gas Transmission Corp.; and United Gas Pipe Line Co.

GAS AGENDA

119TH MEETING—MAY 10, 1978

Regular Meeting

CAG-1. Docket No. RP72-41(PGA Nos. 78-1 and 78-2), Western Transmission Corp.
CAG-2. Docket Nos. RP73-47, RP76-39 and RP77-6, Sea Robin Pipeline Co.
CAG-3. Docket No. RP76-158, North Penn Gas Co.
CAG-4. Docket No. RI77-56, Oil and Gas Futures, Inc. of Texas, et al.
CAG-5. Docket Nos. CI75-773, et al., Pioneer Production Corp., et al.
CAG-6. Docket No. CP78-191, Trunkline Gas Co.
CAG-7. Docket No. CP78-150, Trancontinental Gas Pipe Line Corp.
CAG-8. Docket No. CP76-525, El Paso Natural Gas Co.
CAG-9. Docket No. CP78-137, Panhandle Eastern Pipe Line Co.
CAG-10. Docket No. CP77-648, Equitable Gas Co.
CAG-11. Docket No. CP78-95, Mississippi River Transmission Corp.
CAG-12. Docket No. CP76-526, El Paso Natural Gas Co.
CAG-13. Docket No. CP76-500, Cities Service Gas Co.
CAG-14. *Amoco Production Co.* v. *FERC*, D.C., Cir. No. 78-1312.
CAG-15. Docket No. CP78-41, Columbia Gas Transmission Corp., Equitable Gas Co.

KENNETH F. PLUMB,
Secretary.

[S-954-78 Filed 5-4-78; 9:15 am]

[7020-02]

9

[USITC SE-78-21A]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Sent April 27, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., Thursday, May 11, 1978.

CHANGES IN THE MEETING: Additional agenda item: 9. CFC Award presentation to the Commission (at 10 a.m.).

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-957-78 Filed 5-4-78; 9:19 am]

[7020-02]

10

[USITC SE-78-20C/21B]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 17628, April 25, 1978, and 43 FR 18628, May 1, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., Thursday, May 4, 1978, and Thursday, May 11, 1978.

CHANGES IN THE MEETING: The following item, previously scheduled for the meeting of Thursday, May 11, 1978, as agenda item No. 9, has been added to the agenda for the meeting of Thursday, May 4, 1978:

8. Consideration of motions M-307, M-308, M-309, and M-311 to revise the schedule in Investigation 332-99 (Conversion of Specific and Compound Rates of Duty to Ad Valorem Rates), and motion M-303 and a letter from Mr. Richard Hines, Jr., to revise the schedule in Investigation 332-98 (Customs Valuation).

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-956-78 Filed 5-4-78; 9:15 am]

[4110-29]

11

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH.

TIME AND DATE: May 19, 1978.

PLACE: Room 823, National Institute of Education, 1200 19th Street NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Approve Minutes of March 17, 1978 (9:30 a.m.-9:35 a.m.).
2. Director's Report (9:35 a.m.-10:15 a.m.).
3. General Business (10:15 a.m.-10:45 a.m.).
4. Planning for fiscal year 1980 (10:45 a.m.-12:15 p.m.).
5. Consideration of Council Roles and Priorities (1:15 p.m.-2:30 p.m.).
6. Report of NCER Committee on Review and Reports (2:30 p.m.-Adjournment).

CONTACT PERSON FOR MORE INFORMATION:

Mrs. Ella L. Jones, Administrative Coordinator/NCER, telephone 202-254-7900.

PETER H. GERBER,
Chief, Policy and Administrative Coordination, National Council on Educational Research.

[S-958-78 Filed 5-4-78; 10:12 am]

[7590-01]

12

NUCLEAR REGULATORY COMMISSION.

TIME AND PLACE: Week of May 1, 1978 (Changes).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

THURSDAY, MAY 4

9:30 a.m.

1. Discussion of Petition for Rulemaking Regarding Pat Down Physical Searches (approx. 1 hr.). (Public meeting.) (As announced.)
2. Discussion of Reconsideration of Board Notification Procedures (approx. 1 hr.). (Public meeting.) (As announced.)
3. Affirmation Items (approx. 10 min.). (Public meeting.)
   a. Subsidiary Arrangements to the US/IAEA Safeguards Agreement (as announced).
   b. Action Plan for Modifying the ECCS Rule in 10 CFR 50.46 and Appendix K. (Postponed.)
   c. Cross-Examination of ACRS Consultants (Additional item.)
   d. Approval of Order Denying Exxon Petition (Additional item.)

2:30 p.m.

1. Joint NCR/ACRS Meeting (approx. 1 hr.). (Open/Closed.) (As announced.)
2. Discussion of Amended Wording on section 201(a)(1) of Energy Reorganization Act Legislation (approx. 10 min.). (Public meeting.) (Additional item.)
3. Discussion of Nuclear Nonproliferation Act Including Changes to Part 110 (approx. 1 hr.). (Public meeting.) (Postponed from 1:30 p.m.)
4. Discussion of GESMO Statement of Reasons (approx. 30 min.). (Public meeting.) (Additional item.)

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

MAY 3, 1978.

[S-955-78 Filed 5-4-78; 3:34 pm]

[7590-01]

13

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Tuesday, May 9, 1978.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1:30 p.m.—Item 2. Discussion of Personnel Matters (Exemptions 2, 6) (*Replaces* "Discussion of OIA/OGC Investigation * * *" which is *rescheduled* to May 10, 1978).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

MAY 2, 1978.

[S-959-78 Filed 5-4-78; 2:25 pm]

[7590-01]

14

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of May 8, 1978.

PLACE: Commissioners' Conference Room, 1717 H St., NW., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED:

Wednesday, May 10, 9:30 a.m.

1. Discussion of Matters Relating to Advanced Reactor Safety Agreements (approx. 1 hr.). (Public meeting.)
2. Discussion of Standardization of Nuclear Power Plants (approx. 1 hr.). (Public meeting.)
3. Affirmation Items (approx. 10 min.). (Public meeting.), a. Expansion of Secretary's Authority to Grant Extensions of Time.

1:30 p.m.

1. Discussion of Draft Amendments to the Atomic Energy Act on the Protection of Safeguards Information and Related Matters (approx. 1 hr.). (Public meeting.)
2. Discussion of Testimony on Proposed Licensing Legislation (Open/closed Status to be Determined). (Approx. 1½ hrs.) (Tentative.); or
2. Discussion of OIA/OGC Inquiry in Testimony of the Executive Director for Operations (approx. 1½ hrs.). (*Rescheduled* from 5/9.) (Closed—Exemption 1.)

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

MAY 3, 1978.

[S-960-78 Filed 5-4-78; 2:25 pm]

[8120-01]

15

[Meeting No. 1194]

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 10:30 a.m., Thursday, May 11, 1978.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

MATTERS TO BE CONSIDERED:

A. Personnel Actions

1. Change of Status—H. N. Stroud, Jr., from Assistant to Acting General Manager, Knoxville, Tenn.

B. Consulting and Personal Service Contracts

1. Amendment to consulting contract with Weston Geophysical Engineers, Inc., Weston, Mass.—Office of Engineering Design and Construction.

C. Purchase Awards

1. Req. No. 823521—Furnish all necessary labor, tools, equipment, and materials to perform improvements to the Trace highway at Land Between The Lakes.
2. Amendment to Contract 69P-87-T1 with Peabody Coal Co. for coal for TVA steam plants, covering interim arrangements for coal washing.
3. Req. No. 148567—Management services for uranium/vanadium mill site and properties in Edgemont, S. Dak.
4. Req. No. 98-42-2—Barging services for transporting coal to Shawnee Steam Plant.
5. Req. No. 98-42-3—Rail-to-barge transfer services for coal for Shawnee Steam Plant.
6. Amendment to Contracts 66P-76-T1 and 67P-76-T2 with General Electric for nuclear fuel for Browns Ferry Nuclear Plant.
7. Req. No. 55580 (second reissue)—Indefinite quantity term contract for office furniture.
8. Req. No. 72—Spot coal purchase for Kingston Steam Plant.

D. Project Authorizations

1. No. 3335—Pickwick Landing Project—repair bridge deck over dam.
2. No. 3333—Purchase spare generator rotor for Cumberland Steam Plant Units 1 and 2.
3. No. 3336—Federal-American Partners uranium mining project, Gas Hills, Wyo.

E. Fertilizer Items

None.

F. Power Items

1. Deed and bill of sale to the Electric Plant Board of the city of Franklin Kentucky—13-kV switching facilities at TVA's Franklin Substation site.
2. Lease and amendatory agreement with city of Tullahoma, Tennessee—Tullahoma District Substation and a portion of North Tullahoma 161-kV Substation.
3. Lease and amendatory agreement with city of Milan, Tennessee—Milan 161-kV Substation, Milan District 69-kV Substation, and the proposed South Milan Substation site.
4. Lease and amendatory agreement with city of Cookeville, Tennessee—East Cookeville Substation.
5. Lease and amendatory agreement with Pontotoc Electric Power Association—TVA's Pontotoc 161-kV and Ecru 46-kV Substations.
6. Lease and amendatory agreement with Tishomingo County Electric Power Association—TVA's Belmont and Tishomingo Substations and Tishomingo-Belmont 46-kV Line.
7. Lease and amendatory agreement with Blue Ridge Mountain Electric Membership Corporation—TVA's Wood Grove Substation and Hayesville-Wood Grove 69-kV Line.

G. Real Property Transactions

1. Agreement with State of Tennessee Department of Transportation and Stewart County, Tennessee, for transfer of State Highway 49.
2. Grant of permanent easement for public road right of way affecting approximately 1.17 acres of Guntersville Reservoir land in Jackson County, Ala.—tract XTGR-125H.
3. Grant of 30-year easement to Claiborne County, Tenn., for public recreation facilities, affecting approximately 33.3 acres of Norris Reservoir land—tract XTNR-101RE.
4. Reconveyance to TVA of 0.21 acre of Cherokee Reservoir land in Grainger County, Tenn., and grant of permanent easement to the trustees of Harrell Cemetery for public cemetery expansion—tract XTCK-29.
5. Reconveyance to TVA of certain land on Chickamauga and Fort Patrick Henry Reservoirs—tracts XTCR-21, XTCR-51, and portion of tract XTFHR-4.
6. Sale of certain Tims Ford Reservoir land at public auction—tracts XTMFR-6 and XTMFR-7.
7. Filing of condemnation suits.

H. Unclassified

1. Severance pay for Board secretaries.

Dated: May 4, 1978.

The Board will also conduct the preliminary rate review. In connection with the Board's quarterly financial review, information concerning current and anticipated conditions and costs affecting TVA's power operations and the adequacy of revenues to meet the requirements of the TVA Act and the tests and provisions of its bond resolutions will be discussed with the Board. This information will be considered by the Board in its later determination as to whether an adjustment of the rates and charges for the sale of electric power will be necessary during the quarter beginning July 1, 1978.

CONTACT PERSON FOR MORE INFORMATION:

John Van Mol, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tenn. Information is also available at TVA's Washington Office, 202-566-1401.

[S-968-78 Filed 5-4-78; 3:46 pm]

[3510-13]

16

U.S. METRIC BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 18831, May 2, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Wednesday, May 10, 1978.

PREVIOUSLY ANNOUNCED PORTIONS OF MEETING OPEN TO THE PUBLIC: (1) Budget review, (2) program review.

CHANGES IN THE MEETING: Budget Review Portion of the meeting is closed to the public.

LOUIS F. POLK,
Chairman,
U.S. Metric Board.

[S-969-78 Filed 5-4-78; 1:19 pm]

federal register

MONDAY, MAY 8, 1978
PART II



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

[4110-02]

Title 45—Public Welfare

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

PART 115—SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

Final Regulation

AGENCY: Office of Education, Department of Health, Education, and Welfare.

ACTION: Final regulation.

SUMMARY: This document sets forth the requirements governing the awarding of Federal assistance to school districts related to certain types of children receiving free public education in areas affected by Federal activities. They are being promulgated to bring current regulations into conformance with the amendment to Pub. L. 81-874 made by Pub. L. 93-380. The effect of the regulation is to provide entitlements for handicapped children residing on Indian lands or whose parents are in the uniformed services and for educationally deprived children who live in and/or whose parents are employed on federally assisted low-rent public housing property.

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

FOR FURTHER INFORMATION CONTACT:

William L. Stormer, Division of School Assistance in Federally Affected Areas, telephone 202-245-8427.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 305(a)(1) of the Education Amendments of 1974 revised section 3 of Pub. L. 81-874, which covers the computation of entitlements based on numbers of federally-connected children and section 305(a)(2) revised section 5, which covers the allocation of payments authorized under Pub. L. 81-874, the Impact Aid Program.

Section 3(d)(2)(C) of the Act provides for increased assistance for handicapped children who reside on Indian lands or who have a parent in the uniformed services. The regulation explains the method of computing entitlements for these children and establishes certain requirements for using these funds. Section 5(e)(3) of the Act provides that funds may be paid to an applicant agency for special programs for educationally deprived children. These funds are paid on the basis of the number of children who reside in and/or with a parent employed on eligible low-rent housing property. These two entitlements relating to handicapped children and children associated with low-rent housing are treated, respectively, in Subpart H, formerly published as § 115.28, and in Subpart I, formerly published as § 115.29 in the notice of proposed rulemaking.

1. MAJOR AMENDMENTS TO THE REGULATION

A. *Subpart H—Handicapped Children and Children With Specific Learning Disabilities.*

Subpart H sets forth provisions affecting the determinations for increased entitlements under section 3(d)(2)(C) of the Act and the use of funds attributable to these payments. Certain terms such as "handicapped children" and "children with specific learning disabilities" are defined in § 115.70(c). These are the definitions used in the Education of the Handicapped Act. Eligibility requirements for counting children for these purposes are that these children must have a parent on active duty in the uniformed services or reside on Indian lands and must be receiving services suited to their educational and related needs on the basis of the statutory requirements for these services (§ 115.71(a)).

In determining whether programs for children counted under this provision would meet the statutory requirement of being "sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational and other related needs of such children," the standards of the State in which the local educational agency is situated would apply (§ 115.73(a)). However, these State standards must conform to the policies and procedures established under sections 612 and 613 of the Education of the Handicapped Act (§ 115.73(b)). Applicants seeking to count children under this provision are required under § 115.73(b) to submit an assurance that these children are receiving appropriate services, and this assurance would have to be certified by the division in the State educational agency charged with the supervision of the programs under local auspices. Thus, in certifying programs which provide services for children counted under this provision of Pub. L. 81-874, each State shall apply its own standards for the programs so long as the State standards comply with the requirements of sections 612 and 613 of the Education of the Handicapped Act.

Section 412(b) of the General Provisions Act (20 U.S.C. 1225(b)) is applicable to Pub. L. 81-874 funds attributable to handicapped children or children with specific learning disabilities. Application of this provision will permit recipient local educational agencies to use funds through the fiscal year following the fiscal year for which the funds were appropriated.

B. *Subpart I—Entitlements Related to Low-Rent Public Housing.*

Subpart I sets forth requirements to ensure that payments made under Pub. L. 81-874 based on the number of children residing on or residing with a parent employed on low-rent public housing property, as determined under section 5(e) of the Act, are used for special programs and projects designed to meet the special educational needs of educationally deprived children from low-income families.

Section 115.81(b) establishes the following order of priority for the use of these funds:

(1) To be used for Title I, ESEA programs and projects that would be diminished or discontinued because of the new Title I allocation formula adopted under Pub. L. 93-380, where such a determination is possible; or

(2) To provide Title I programs and projects in eligible Title I areas which otherwise would be unfunded;

(3) To supplement existing Title I programs;

(4) To provide Title I-type programs for educationally deprived children in attendance areas of the local educational agency that do not meet the eligibility requirements under Title I, ESEA.

With regard to the first priority, it is recognized that it may not be possible for a school district to attribute the elimination or reduction of a particular program to the adoption of the new Title I, ESEA formula. In these instances, these funds must be used in unfunded eligible attendance areas, if any. Only when these needs have been fully met may the funds be used to provide Title I-type programs. Furthermore, if there are no unfunded eligible areas, the school district may use funds in accordance with the last two priorities. School districts are encouraged to serve ineligible areas in the order established for Title I. The use of these funds to further Title I purposes is prescribed in the legislative history of the provisions (S. Rept. 93-1026, p. 162 (1974)).

In administering section 5(e), the Office of Education utilizes the personnel and organizational structure already involved in the provision of Title I-type services in order to avoid a duplication of administrative func-

tions. Applications are submitted through the State educational agency, according to procedures under § 115.11. However, it will be necessary for the applicant to obtain certification from the State Title I component regarding the applicant's assurances that these funds are to be used in Title I or Title I-type programs in conformity with this regulation. Monitoring is to be done by the State educational agency Title I monitoring component. This will avoid duplication of monitoring in programs where most of these funds are expected to be used.

2. COMMENTS ON THE PROPOSED REGULATION

Interested parties were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed final regulation. (The Notice of Proposed Rulemaking was published in the FEDERAL REGISTER on December 5, 1975.) A summary of the comments and responses follows. The comments are arranged in order of the subparts of the final regulation to which they apply. For additional clarity, reference section numbers are included in this response to comments as they appear in the regulation followed by the section numbers in brackets [ ] as they appeared in the notice of proposed rulemaking.

A. *Subpart H—Entitlements Related to Handicapped Children. Comment.* One commenter declared that § 115.71 [§ 115.28], on entitlements related to handicapped children of uniformed services personnel, was inconsistent with recent Federal legislation on education of the handicapped and should conform to it. The commenter, however, did not specify the particulars to which he referred.

Response. No change has been made in the regulation. The regulation is consistent with the Education of the Handicapped Act, from which the definitions in § 115.70 [§ 115.28] of "handicapped children" and "children with specific learning disabilities" are taken.

Comment. Two commenters observed that § 115.71 [§ 115.28(c)(1)] restricts eligibility for being counted for the purpose of an increased entitlement under section 3(d)(2)(C) of the Act to handicapped children and children with learning disabilities, limiting eligibility to those who have a parent on active duty in the uniformed services and excluding children who live on Indian lands. The commenters referred to section 3(d)(2)(C)(i) of Pub. L. 81-874 with respect to those children for whom a determination is made under section 3(a)(2) and stated that section 3(d)(2)(C) did not mention uniformed services. They also pointed out that children residing on Indian lands comprise the second of two groups of children and are in addition to those with a parent on active duty in the uniformed services for whom a determination is made under clause (2) of section 3(a). The commenters argued that the law, on the surface, did not allow a ruling that would authorize a distinction between the treatment of the handicapped children of uniformed services personnel and handicapped children living on Indian lands.

Response. The regulation has been changed. The interpretation of the commenters was sustained in *Chinle Common School District* v. *Mathews*, Civil No. 76-1273 (DC, D.C., 1976). The regulation allows school districts to be compensated for handicapped children of uniformed services personnel or for those who reside on Indian lands under section 3(d)(2)(C).

Comment. One commenter remarked that the submission of information required in § 115.72 [§ 115.28(d)] should be undertaken if and when requested by the Commissioner. The section states that an applicant which claims an increased entitlement under section 3(d)(2)(C) of the Act shall be required to submit information the Commissioner may deem necessary to substantiate compliance with this condition. The commenter said that this information may not be needed from all applicants requesting an increase in entitlement.

Response. The regulation has been clarified to meet the concerns of the commenter. An applicant need not submit the information in the application but may be asked to do so later to assure compliance with the regulation.

Comment. One commenter stated that § 115.73(b) [§ 115.29(c)], in effect, imposed a State plan on local educational agencies, and the commenter declared that the law did not require State approval for each administrative action by a local educational agency, and that no Congressional committee had contemplated or discussed the idea of a State plan for aid under Pub. L. 81-874.

Response. No change has been made in the regulation. The regulation provides for the application of State standards to the programs provided by local educational agencies in which the handicapped children and children with specific learning disabilities are participating. Legislative history indicates that Congress contemplated that State standards would be sufficient for certifying these programs if they were in line with Education of the Handicapped Act requirements.

House Report No. 93-805 states, on page 45, with reference to the programs provided by local educational agencies for eligible children, that the determination of size, scope, and quality shall be based upon the individual State's standards for certification of these programs, and that each State must certify the particular programs. That report further indicates that the Commissioner must also require satisfactory assurance that all local educational agency programs for handicapped children counted under that part are in compliance with requirements now set forth under sections 612 and 613 of the Education of the Handicapped Act.

For the purposes of Pub. L. 81-874, the State merely has to certify conformance of the applicant's program with the policies and procedures required under the Education of the Handicapped Act.

Comment. One commenter objected to the citation in § 115.73(b) [§ 115.28(f)] of section 613(a) of the Education of the Handicapped Act stating the citation did not apply to Pub. L. 81-874 since it set forth procedures for qualifying for a grant under a State plan which Pub. L. 81-874 did not require.

Response. A clarification has been made in the wording in the regulation. As the previous response indicates, the legislative history makes clear that Congress intended that programs for handicapped children and children with learning disabilities under section 3(d)(2)(C) of the Act were to conform to policies and procedures required under the Education of the Handicapped Act.

B. *Subpart I—Low-rent Housing Entitlements. Comment.* Two commenters brought up the question of children eligible to be counted in computing entitlements pertaining to low-rent public housing, but who do not attend school in the district in which they live, or who attend school outside the area eligible for Title I aid. One commenter said a statement was needed under § 115.82 [§ 115.29] to the effect that "the money follows the child," as he said was provided by Title I regulations. The other commenter said that these children were excluded from sharing in any benefits from funds that their presence helped to bring to the school district.

Response. No change has been made in the regulation. Section 3(a) of Pub. L. 81-874 states that children, in order to be included among the number for whom a determination is made for the entitlement computations, are to have been in average daily attendance at the schools of the applicant agency that provided free public education for them. The use of payments made to a local educational agency under section 5(e) may include the provision of educational benefits to educationally deprived children from low-income families who do not live or work on low-rent public housing property. The statute does not limit the use of funds to children counted for entitlement purposes. It is possible that children may not receive services even though

their enrollment occasioned payments to their school district.

Comment. One commenter raised the issue whether children of families receiving welfare payments and living in public housing projects should be classified under section 3(a) or 3(b) of the Act. The commenter said that the proposed regulation failed to provide guidance on that question. The commenter argued that students living in housing projects whose parents receive welfare should be counted under section 3(a). The commenter said that counting those students under section 3(a) rather than 3(b) would agree with the intent of Congress because it would restore funds lost to local school systems through the change made by Pub. L. 93-380 in the formula for the distribution of assistance under Title I of the Elementary and Secondary Education Act. The commenter also said that including children under 3(a) would be consistent with the distinction drawn by section 3 of Pub. L. 81-874 between parents who lived and worked on Federal property and those who met only one of those conditions because, usually being unemployed, those parents make no indirect contribution to the tax revenues of local educational agencies. Families on welfare living on low-rent public housing property are more like the families classified under section 3(a) than 3(b).

Response. No change has been made in the regulation. Whether a child living in low-rent public housing with a parent who receives welfare payments should be counted under section 3(a) of the Act is governed by the provision of that section and not section 5(e)(3). The legislative history of section 3 clearly indicates that children living in federally assisted low-rent public housing are not to be considered section 3(a) children without a second "Federal connection" (H. Rept. 93-805, p. 42 (1974)). To include a child living in low-rent public housing in the number determined under section 3(a), the child's parent must be employed on Federal property or be on active duty in the uniformed services.

Comment. A commenter said that § 115.81 [§ 115.29] made the public housing provisions a categorical Title I program. The commenter said that although the reports mentioned services to the kinds of children designated in Title I, legislation was not included in Pub. L. 81-874. If Congress had intended funds to be paid under Title I procedures for students in public housing, Part C of Title I would have been completely retained, and provisions for public housing students would have been added as an additional program.

Response. No change has been made in the regulation. The legislative history clearly relates the use of these payments to Title I or Title I-type services.

Comment. One commenter expressed concern that §§ 115.74 [§ 115.28] and 115.81 [§ 115.29] on entitlements relative to handicapped children and to low-rent public housing might require a local educational agency to budget and spend funds in the amount of estimated entitlements for these categorical purposes before actual receipt of even partial payments for those entitlements. The commenter said that such a requirement would be an extreme hardship for any local educational agency, particularly during periods when borrowing costs are excessive.

Response. No change has been made in the regulation. The comment appears directed not to the regulation, but to the practical consequences of Pub. L. 81-874 funds being unavailable for payment until sometime later in the school year. Payments will be made in accordance with established procedures. However, school districts may use these funds in the fiscal year following the year for which they were allocated. This gives the recipient school district the choice of holding the funds for future expenditure or of reimbursing itself for funds already spent.

Comment. One commenter stated that the provisions in § 115.86 [§ 115.29] relating to low-rent public housing entitlements were stated too generally. The commenter asked whether funds had to be expended within a given period and whether evaluations like those of Title I would be necessary. The commenter felt the intent of the legislation would be lost if it had to conform both to Pub. L. 81-874 and to Title I, ESEA.

Response. The regulation has been rewritten in part to be more specific and to reflect changes made in response to public comments or administrative reconsideration of the proposed rule. Funds must be expended by the end of the fiscal year succeeding the fiscal year for which they were allocated. Evaluations like those required under Title I must be made annually [§ 115.86]. It is clear from the legislative history that Congress intended that section 5(e) funds would provide a Title I-type program. Thus, it is appropriate that basic Title I-type provisions apply to the use of these funds in order that purposes similar to those of Title I will be fulfilled.

Comment. A commenter said the regulation in § 115.84(b) [§ 115.29] seemed to require a value judgment in determining whether any needs were unmet in Title I, ESEA areas. He said there were always many unmet needs because the application of Federal Title I and State requirements restricted possible program endeavors to a very narrow range of eligible reading activities.

Response. No change in the regulation has been made. There is a presumption of unmet needs in eligible areas which have approvable projects but do not have Title I assistance. Until those needs are filled, funds resulting from entitlements relative to low-rent public housing may not be spent in non-Title I attendance areas.

Comment. A commenter cited section 421(c)(2)(B) of the General Education Provisions Act to contest that either Pub. L. 81-874 or Title I, ESEA gave State educational agencies authority over the use of funds for Pub. L. 81-874. Section 421(c)(2)(B) of the General Education Provisions Act prohibits any limitation on the use of funds to carry out any applicable program other than limitations imposed by the law authorizing the appropriation or a law controlling the administration of the program.

The commenter further pointed out that section 421(c)(1)(C) of the General Education Provisions Act forbids the commingling of funds from two different appropriations and provides conditions for the approval of an application for funds from an appropriation that is based upon criteria other than those for which provision is made in the law authorizing the appropriation. The commenter said nothing in Pub. L. 81-874 gives any State agency approval authority or imposes Title I, ESEA requirements. In the opinion of the commenter, section 5(e)(3) simply provides that funds derived from entitlements based on children from low-rent public housing must be used for special programs and projects designed to meet the special educational needs of educationally deprived children from low-income families. In addition, the commenter argued that the imposition by § 115.81 [§ 115.29] of rigid priorities on the types of projects to be funded was based on an expression of intent that was not the law, that could not override section 421(c)(1) of the General Education Provisions Act, and that could not be used to create a new administrative mechanism and impose new requirements.

Response. No change has been made in the regulation. While certain requirements of the regulation may not be explicitly set out in the statute, they are, nevertheless, clearly set forth in the legislative history of the statute. The purpose of interpreting and implementing any statute is to effect the will of the legislature. To disregard the express will of Congress as reflected in the Committee reports, in this instance, would operate to defeat the purposes for which this provision was adopted. Therefore, this regulation does not conflict with section 421(c)(2)(B) of the General Education Provisions Act. Furthermore, since the funds provided under section 5(e)(3) of Pub. L. 81-874 will be subject to separate accountability from funds

provided under Title I, ESEA, the use of these funds in jointly funded projects would not constitute commingling.

Comment. One commenter expressed support for the priorities in § 115.81(b) [§ 115.29(b)(i)] regarding the use of funds under section 5(e) and for the ban stated in § 115.81(e) [§ 115.29(c)] against the consolidation of those funds with other payments under the Act or with funds from other sources. The commenter also stated a concern that the phrase "shall serve only * * * educationally deprived children from low-income families" was subject to an interpretation that would require children from low-income families served with funds authorized under the Act to be segregated from other educationally disadvantaged pupils. The commenter characterized as potentially inconsistent the use of the word "only" and the stipulation that the criteria for the participation of the children approximate those with respect to Title I, ESEA.

The commenter pointed out that under Title I, ESEA, schools and not children are selected to receive funds on the basis of the poverty of the residents of the area, and the children in those schools participate on the basis of educational need whether or not their families are impoverished. The commenter said that he did not believe that Congress intended section 5(e)(3) to result in the stigmatization or identification of low-income students receiving remedial services. The commenter expressed the view that section 5(e)(3) deals with the design of programs rather than the delivery of services and does not compel the restriction of compensatory services only to low-income children.

Response. The regulation has been changed in response to the comment. There is no indication of Congressional intent to exclude from the services of these projects, children who are educationally deprived in other ways besides being from low-income families. The evident intent that the provisions of Title I, ESEA and section 5(e) be coordinated implies the inclusion not only of children from low-income families, but also of all educationally deprived children in participation in the benefits of these programs.

Comment. A commenter said he interpreted § 115.29(b)(2) of the proposed rule to mean that the amount of payment would be used to benefit all children of low-income families. This would involve dual criteria for serving the same children as served by Title I, ESEA. He recommended changing the phrase "may consider" in the last sentence of the section to "shall only consider" to restrict the provision of services to the children of the stated categories.

Response. The regulation has been changed so that educationally deprived children from low-income families are not distinguished from other educationally deprived children. All educationally deprived children may be served in programs assisted by section 5(e) funds. A local educational agency is not required to make low-income determinations under this program.

Comment. One commenter hoped the text of § 115.81(b) [§ 115.29(d)] could be republished in proposed rather than in final form after a determination had been made with respect to the sections of the Act and regulations of Title I of the Elementary and Secondary Education Act that do not apply to the activities authorized by Pub. L. 81-874.

Response. No change in the regulation is necessary. Certain sections of the Title I regulations and statutory provisions were mentioned in the notice of proposed rulemaking as possibly inapplicable to this regulation. Some interested parties did respond to the request for further suggestions, objections, and comments as to which of these Title I provisions should apply. The public interest would not be served to delay the final promulgation of this regulation and thereby keep recipients from receiving authoritative guidance in making plans for the use of funds during the school year.

Comment. Certain comments addressed the applicability of particular Title I, ESEA requirements to activities conducted in accordance with section 5(e) of the Act regarding public low-rent housing funds. One commenter opposed the suggested exclusion of 45 CFR 116.4(b), which allows spending one percent of the Title I allocation on State administrative expenses. The commenter felt that including this section would emphasize the States' obligation to monitor the compliance of local educational agencies in restricting use of funds to special programs and projects designed to meet the special educational needs of educationally deprived children from low-income families. The commenter pointed out that, although Pub. L. 93-380 authorized no funds for State administrative costs, the notice of proposed rulemaking stated, "The Office of Education plans to utilize the personnel and organizational structure already involved in the provision of Title I-type services in order to avoid a duplication of administrative functions." The commenter said it was appropriate to treat State administrative expenses directly attributable to the monitoring of programs under section 5(e)(3) as permissible Title I State administrative expenses.

Another commenter protested that the one percent allowance was not nearly enough to provide the services and meet the demands that the Office of Education placed on the State educational agency for the administration of Title I, ESEA, and insisted that a more realistic amount be specified.

Response. No change has been made in the regulation. Funds appropriated for Pub. L. 81-874 are provided entirely for making payments to eligible local educational agencies. There is no authority for the Commissioner to allocate any funds to which local educational agencies are entitled to State educational agencies. Therefore, no question remains in regard to the Commissioner's authority to provide more than 1 percent. The States have already assumed certain administrative duties and expenses for which it is not reimbursed by Pub. L. 81-874 funds.

Comment. A commenter said it was not understood why the principle in § 116.20 regarding Title I, ESEA, and in section 434(c) of the General Education Provisions Act, providing that further payments not be made to delinquents until they complied with the terms of their grants, should not apply to misexpenditures of section 5(e)(3) funds and Title I funds.

Response. No change has been made in the regulation. Section 434(c) of the General Education Provisions Act applies to all applicable Federal education assistance programs, including Pub. L. 81-874. Therefore, it is not necessary to provide for this in the regulation.

Comment. A commenter argued that it was unnecessary to exclude from section 5(e)(3) the applicability of provisions of 45 CFR 116.36(a) with respect to expenditures for property. The specific reference to the purposes of Title I in section 5(e)(3) could be interpreted to mean the purpose common to both Title I and section 5(e)(3) in meeting the special educational needs of educationally deprived children.

Response. The regulation has been amended in accordance with the suggestion of the commenter.

Comment. A commenter felt § 115.81 [§ 115.29] should be amended to allow the expenditure in the current fiscal year of funds allocated in the previous year, as in the case under Title I, ESEA regulations.

Response. The regulation has been changed in response to the comment.

Comment. A commenter recommended a change in § 115.81(f) [§ 115.29] to extend the effectiveness of the provisions under Title I in regard to indirect cost of the operation of programs under section 5(e).

Response. The regulation has been changed to provide that Part 100c of Title 45 CFR dealing with indirect cost apply to programs under section 5(e).

Comment. A commenter said, in reference to § 115.84 [§ 115.29(e)], that

$11 million made it worth the while of his local educational agency to endure the extreme complexity and time consumption of the application process under Title I and the expense of the application, monitoring, reporting, and evaluation processes required by the law. Declaring his understanding that funds under Pub. L. 81-874 must remain identifiable for accountability purposes and that an entirely new accounting system would be required for any added programs, the commenter said it was questionable whether a grant about one-sixtieth (1/60) of the Title I amount would be worth the effort.

Response. The regulation has been changed so that, under section 5(e)(3), a description of a proposed project is required, rather than an application. If a project supplements an existing Title I project, only that part funded under section 5(e)(3) need be described. Accountability cannot be waived for these categorical funds.

Comment. A commenter asserted that there was no requirement under Pub. L. 81-874, as amended by Pub. L. 93-380, for the State to monitor programs of aid to federally affected areas and demanded that this requirement and all others relevant to it be dropped. The commenter said that the law required only assurances; anything in addition was not authorized. The commenter added that if Congress had wanted to give additional authority to the Office of Education or the Commissioner, it would have done so as it did in section 3(d)(2)(C)(iii) of Pub. L. 81-874, as amended by Pub. L. 93-380.

Another commenter favored the use of the regular State Title I monitoring components rather than the use of special services contracts between the Office of Education and the State agencies to implement the injunction that the State agency notify the Commissioner if a local educational agency has failed to comply with the terms of its application. The commenter expressed the view that, in most instances, local educational agencies would replace former ESEA Title I programs with others under section 5(e)(3), that the cost of monitoring the section 5(e)(3) programs might be considered part of a State's expenses in administering the Title I program, and that funds allocated to programs under section 5(e)(3) should not be diverted to fund special service contracts.

Response. The regulation has been rewritten to specify that the State educational agency should monitor the expenditures of section 5(e) funds by applicants. The Conference Report, Senate Rept. No. 93-1026, states on page 162, "The State education agency should monitor the expenditures of these funds for public housing since that agency has responsibility for monitoring the expenditure of Title I, ESEA."

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

(Catalog of Federal Domestic Assistance Program No. 13.478, School Assistance in Federally Affected Areas—Maintenance and Operation.)

Dated: January 18, 1978.

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

Approved: April 26, 1978.

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

Part 115 is amended by adding Subpart H and Subpart I to read as follows:

Subpart H—Handicapped Children and Children With Specific Learning Disabilities

Sec.
115.70 General.
115.71 Eligibility requirements.
115.72 Application procedures.
115.73 Assurances and certifications.
115.74 Use of section 3(d)(2)(C) funds.
115.75 Per pupil expenditure requirement.
115.76 Relation to section 5(d)(2) of the Act.
115.77 Children in private schools.
115.78 Individualized educational programs and parental involvement.
115.79 Applicability of other statutory and regulatory requirements.

AUTHORITY: (20 U.S.C. 238, 240, 242(b)).

Subpart H—Handicapped Children and Children With Specific Learning Disabilities

§ 115.70 General.

(a) *Scope.* The regulation in this Subpart governs the provision of financial assistance to local educational agencies which provide free public education to handicapped children who are claimed under section 3(d)(2)(C) of the Act. The regulation, however, is not alone in governing the relationship between the local educational agency and the handicapped child. Other statutes and regulations which may be pertinent in a particular instance are section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 706 and 45 CFR Part 84 ff.), the Education of the Handicapped Act, as amended by the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401 et seq. and 45 CFR Part 121 ff.), and section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241c-1 and 45 CFR Part 116).

(b) *Purpose.* The purpose of the regulation in this Subpart is to set forth the requirements, interpretations, and guidance necessary to implement section 3(d)(2)(C) of the Act.

(c) *Definitions.* For the purposes of this Subpart, the following terms are defined as indicated:

(1) "Children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. These disorders include conditions such as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, or of environmental, cultural, or economic disadvantage.

(2) "Education of the Handicapped Act" means Pub. L. 91-230, as amended (20 U.S.C. 1401 et seq.).

(3) "Free public education" means free appropriate public education as used in the Education of the Handicapped Act and as defined in 45 CFR 121a.4. In particular, this means special education and related services which:

(a) Are provided at public expense, under public supervision and direction, and without charge,

(b) Meet the standards of the State educational agency, including the requirements of this part,

(c) Include preschool, elementary school, or secondary school education in the State involved, and

(d) Are provided in conformity with an individualized education program which meets the requirements under 45 CFR 121a.340-121a.369.

(4) "Handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired, deaf-blind, multi-handicapped children, or as having specific learning disabilities, who because of those impairments need special education and related services.

(5) "Preschool program" means an educational or related program encompassing the educational level from a child's birth to the time at which elementary education is provided as determined under State law, provided that this program is recognized as free public education under State law.

(6) "Related needs" means those needs related to a handicap or specific learning disability for which related services, in addition to direct instructional services, are deemed necessary so that the child may effectively participate in the instructional program of the local educational agency.

(7) "Related services" means transportation and other developmental,

corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that these medical services shall be for diagnostic and evaluation purposes only) required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

(20 U.S.C. 238(d)(2)(C).)

§ 115.71 Eligibility requirements.

(a) In order that a handicapped child may be counted for the purpose of an increased entitlement under section 3(d)(2)(C) of the Pub. L. 81-874, the Act requires that a child must—

(1) Have a parent on active duty in the uniformed services, as defined by section 101 of Title 37 United States Code, or

(2) Reside on Indian lands, as described in section 403(1)(A) of the Act;

(3) Be receiving services suited to the child's special educational and related needs; and

(4) Be enrolled in a program (including a preschool program if appropriate) which is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the child's special educational and related needs provided as part of free public education in the local educational agency.

(b) The applicant agency must meet the regular eligibility requirements of Pub. L. 81-874 under section 3(c) to receive the increase in entitlement under section 3(d)(2)(C). However, there is no minimum number of handicapped children who must be served for the agency to receive the increase in entitlement.

(c) The program provided the handicapped children claimed under section 3(d)(2)(C) of the Act must conform to State standards for programs for handicapped children and must encompass the specific educational and related needs of the children claimed.

(20 U.S.C. 238(a)(b)(d)(2)(C); 240(f); Sen. Rept. No. 93-1026, p. 159 (1974); *Chinle Common School District* v. *Mathews*, Civil No. 76-1273 (D. D.C., 1976).)

§ 115.72 Application procedures.

(a) The applicant agency must state the number of handicapped children it claims under section 3(d)(2)(C) of the Act in the application filed in accordance with procedures set forth in Subpart B of this regulation published separately.

(b) The applicant agency must provide the assurances and certifications required under § 115.73 of this Subpart as part of the application mentioned in paragraph (a).

(c) The Commissioner may require information in addition to that contained in the application in order to substantiate compliance with assurances provided with the application.

(20 U.S.C. 238(d)(2)(C), 242.)

§ 115.73 Assurances and certifications.

(a) *Size, scope, and quality of the programs.* (1) For each applicant for assistance under the Act which is based in any part upon children who are counted under section 3(d)(2)(C) of the Act, the applicant agency must provide an assurance that these children are receiving services in programs (including preschool programs) which are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational and related needs of these children. The Commissioner will consider any special education program serving the special educational needs of these children which conforms to the requirements for special education programs under Part B of the Education of the Handicapped Act as satisfying the assurance.

(2) For each application containing the assurance required by paragraph (a)(1) of this section, the applicant agency must also provide a certification from its State educational agency that the particular program(s) provided by the applicant conform(s) to State standards for programs for these types of children.

(b) *Education of the Handicapped Act requirements.* (1) For each applicant for assistance under the Act which is based in any part upon a determination under section 3(d)(2)(C) of the Act, the applicant agency must provide an assurance that the programs designed to meet the special educational and related needs of children determined under that section conform to the policies and procedures required in fulfillment of requirement under sections 612 and 613 of the Education of the Handicapped Act.

(2) For each application containing the assurance required by paragraph (b)(1) of this section, the applicant agency must provide a certification from the State educational agency that the program provided by the applicant conforms to the requirements of sections 612 and 613 of the Education of the Handicapped Act.

(3) In undertaking any further determination whether these State standards and programs conform to the policies and procedures required under sections 612 and 613 of the Education of the Handicapped Act, the Commissioner shall consult with persons in charge of special education programs for handicapped children and children with specific learning disabilities in the State education agency.

(20 U.S.C. 238(3)(2)(C); H.R. Rept. No. 93-805, pp. 43-46 (1974); Sen. Rept. No. 93-1026, p. 45 (1974); Cong. Record, daily ed., H7396, July 31, 1974)

§ 115.74 Use of section 3(d)(2)(C) funds.

(a) *General.* Section 5(f) of the Act requires that the amount of a payment to an applicant which is attributable to a determination under section 3(d)(2)(C) of the Act must be used for special programs and projects designed to meet the special educational needs of the children counted under that provision. Only payments related to the increase in entitlement affected by section 3(d)(2)(C) must be used in this manner. Payments related to the basic entitlement provided under section 3(c) for those children do not have to be used in this manner.

(20 U.S.C. 240(f))

(b) *Duration of availability of funds.* An applicant may obigate and expend funds received for section 3(d)(2)(C) until the end of the fiscal year succeeding the fiscal year for which they were appropriated. The recipient agency must return those funds to the U.S. Office of Education that it has not obligated by the end of that period.

(20 U.S.C. 1225(b))

(c) *Methods of obligation and expenditure of funds.* Obligations and expenditures may be incurred for the uses authorized under section 5(f) of the Act and paragraph (a) of this section in either of two ways:

(1) The applicant agency may reimburse itself for obligations or expenditures from local funds already made during the fiscal year for which the funds were appropriated or during the following fiscal year. Those obligations or expenditures must have been for appropriate programs or projects serving the children from whom the funds under section 3(d)(2)(C) were paid; or

(2) The applicant agency may obligate or spend these funds on a current basis during the fiscal year for which the funds were appropriated or during the following fiscal year. The obligations or expenditures must be for programs or projects serving the children for whom the funds under section 3(d)(2)(C) were paid.

(20 U.S.C. 238(d)(2)(C), 240(f), 242)

(d) *Allowable expenditures.* An agency receiving funds under section 3(d)(2)(C) of the Act shall use those funds for the following types of expenditures:

(1) Expenditures which are reasonably related to the conduct of programs or projects for the education of handicapped children which meet the requirements of this section. These expenditures may include planning, evaluating and disseminating of the results of those programs or projects but may not include the construction of school facilities;

(2) Expenditures for equipment to meet the special educational needs of

the handicapped children counted under section 3(d)(2)(C). If funds received under section 3(d)(2)(C) of the Act are used for the acquisition of equipment and any financial advantage is realized through bargains, rebates, discounts, bonuses, free pieces of equipment (not used in the program or project covered by this paragraph) or other circumstances, the fair market value of that financial advantage is not an allowable expenditure and shall not be credited as an expenditure of those funds.

In no case may funds provided by section 3(d)(2)(C) be used to acquire equipment when the title to that equipment would be in a private school and not in the applicant agency.

(e) *No supplanting of State funds.* The use of funds provided under section 3(d)(2)(C) of the Act shall not supplant any State funds which were or would have been available to the applicant agency for the free public education of children counted under section 3(d)(2)(C).

(1) The applicant agency must spend at least the same amount, per pupil, of State general aid funds and State handicapped education funds on children counted under section 3(d)(2)(C) as it does for other similarly handicapped children enrolled in the schools of the agency.

(2) A reduction in the amount, per pupil, of State aid spent on children counted under section 3(d)(2)(C) of the Act from that spent in a previous year raises a presumption that supplanting has occurred. This presumption may be rebutted by the applicant agency demonstrating that an equivalent reduction was made in the amount, per pupil, spent on other handicapped children enrolled in the schools of the agency.

(20 U.S.C. 235, 238, 240 and 242(b).)

§ 115.75 Per pupil expenditure requirement.

(a) *Expenditures for children eligible under section 3(d)(2)(C).* Expenditures per pupil by an applicant agency from State, local, and section 3(d)(2)(C) funds for handicapped children enrolled in programs serving children counted under section 3(d)(2)(C) must be greater than the expenditure per pupil for all children, other than handicapped children, receiving free public education in the schools of that agency.

(b) *Computation.* In determining whether an agency fulfills the requirement stated in paragraph (a) of this section, the following computations must be made:

(1) Divide the total current expenditures from State, local, and section 3(d)(2)(C) funds for special educational programs by the total number of children who are being served in the special educational programs of the agency.

(2) Divide the total current expenditures from State and local funds for children receiving a free public education from the agency who are not handicapped children by the total number of those children who are not handicapped.

(3) If the figure obtained under paragraph (b)(1) exceeds the figure obtained in paragraph (b)(2), the applicant agency has fulfilled the requirement of paragraph (a) of this section.

(c) *Records and information required of an applicant agency.* An applicant agency which receives funds under section 3(d)(2)(C) must keep records of the expenditures for children receiving a free public education in its schools in such a manner to permit the computation set forth in paragraph (b) of this section. Furthermore, when requested, that agency must furnish to the Commissioner whatever information or data the Commissioner considers necessary to substantial compliance with the requirements of this section

(20 U.S.C. 238(d)(2)(C), 240(f); H. Rept. No. 93-763, p. 45 (1974).)

§ 115.76 Relation to section 5(d)(2) of the Act.

(a) Section 5(d)(2) of the Act provides that States having a State aid program designed to divide expenditures for children equally among local educational agencies in the State, which conform to Subpart B, may consider payments received by an agency under Pub. L. 81-874 as local resources in determining the need for or the amount of State aid allocated to that agency. A regulation setting forth these standards appears in Subpart B of this part.

(b) Whether or not a State has a program of State aid that meets the requirements of section 5(d)(2) of the Act, payments provided under section 3(d)(2)(C) may not be considered by a State in determining the need for or the amount of State aid which will be allocated to a local educational agency receiving those payments.

(20 U.S.C. 238(d)(2)(C), 240(d), (f), 242(b).)

§ 115.77 Children in private schools.

(a) An applicant may place a handicapped child in, or refer a handicapped child to a private school or facility, so long as it follows the policies and procedures for doing so established under section 613 of the Education of the Handicapped Act. Regulations implementing those policies and procedures are set forth in 45 CFR § 121a. The applicant must have placed the handicapped child in, or have referred the children to, the private school or facility that he or she is attending in order for the child to be counted under section 3(d)(2)(C) of Pub. L. 81-874.

(b) If placement in a public or private residential program is necessary to provide a free public education to a handicapped child because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the child or his or her parents or guardian.

(c) Children who have been placed in private schools by the parents may participate in public school programs which use section 3(d)(2)(C) funds.

(20 U.S.C. 238, 240(f), 242(b), H. Rept. 93-763, p. 45 (1974).)

§ 115.78 Individualized educational programs and parental involvement.

(a) Each applicant must have in effect a written individualized educational program for a child counted under 3(d)(2)(C) of the Act. This program must:

(1) Be in effect before special education and related services are provided to the child; and

(2) Be implemented as soon as possible after meetings held for the purpose of developing, reviewing or revising the child's program.

(b) Each applicant must provide for the participation of and consultation with parents or guardians of handicapped children counted under section 3(d)(2)(C) of the Act in the children's educational development.

(c) Each applicant must take steps to insure the involvement of a handicapped child's parents or guardian in meetings held for the purpose of developing, reviewing or revising that child's educational program.

(d) Each applicant shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(e) The notice under paragraph (d)(1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(f) If neither parent can attend, the applicant shall use other methods to insure parent participation, including individual or conference telephone calls.

(g) A meeting may be conducted without a parent in attendance if the applicant is unable to convince the parents that they should attend.

(h) The applicant shall take whatever action is necessary to insure that the parent understands the proceed-

ings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(i) The applicant shall give the parent, on request, a copy of the child's educational program.

(j) An applicant which satisfies, for children counted under section 3(d)(2)(C), the requirements of Part B of the Education of the Handicapped Act regarding the involvement of parents of handicapped children will have satisfied the requirements of this section.

(20 U.S.C. 238(d)(2)(C), 240(f), 242(b), 1231(d).)

§ 115.79 Applicability of other statutory and regulatory requirements.

(a) *Applicability of General Provisions Regulations.* Relevant provisions contained in parts 100a and 100c of this Chapter are applicable to programs conducted under section 3(d)(2)(C), with the following exceptions:

Sec.
100a.15 Applications for grants or contracts.
100a.26 Review of applications.
100a.27 Disposition of applications.
100a.31 Preapplications.

Subpart C—Application Forms for State and Local Governments

100a.54 Duration of projects.
100a.62 Payment methods for nonconstruction projects.
100a.71 Checks-paid basis letter of credit.

Subpart P—Financial Reporting Requirements

100a.405 Request for advance or reimbursement.

Subpart Q—Monitoring and Reporting of Program Performance

100a.432 Performance reports for nonconstruction projects.

(20 U.S.C. 1221c(b)(1); 20 U.S.C. 242(b); OMB Cir. A-102.)

(b) *Applicability of civil rights and related requirements.* Payments provided under section 3(d)(2)(C) are subject to the requirements of the following laws and regulations: Title VI of the Civil Rights Act of 1964 (45 CFR Part 80); Title IX of the Educational Amendments of 1972 (45 CFR Part 86); and section 504 of the Vocational Rehabilitation Act of 1973 (45 CFR Part 84).

(42 U.S.C. 200d; 20 U.S.C. 1681, 29 U.S.C. 794)

Subpart I—Entitlements Related to Low-Rent Public Housing

Sec.
115.80 General.
115.81 Use of section 5(e) funds.
115.82 Application procedures.
115.83 Monitoring.
115.84 Needs assessment.
115.85 Project description, size, scope, and quality.
115.86 Measurement of educational achievement and evaluation of programs.
115.87 Parent advisory councils.
115.88 Participation of private school children.
115.89 Applicability of other statutory and regulatory requirements.

AUTHORITY: 20 U.S.C. 238-240, 242(b), 244.

Subpart I—Entitlements Related To Low-Rent Public Housing

§ 115.80 General.

(a) *Scope.* The regulation in this Subpart concerns entitlements calculated under section 3 of the Act with respect to children who reside on low-rent public housing or who reside with a parent who is employed on low-rent public housing.

(b) *Purpose.* The purpose of the regulation in this Subpart is to implement the requirement stated in section 5(e)(3) of the Act that funds paid to local educational agencies with respect to the children described in paragraph (a) of this section must be used for special programs and projects designed to meet the special educational needs of educationally deprived children. This regulation establishes particular procedural and substantive requirements regarding the application for and use of these funds.

(c) *Definitions.* For the purposes of this subpart, the following terms are defined as indicated:

(1) "Educationally deprived children" means (1) children who have need for special educational assistance in order that their level of achievement can be raised to that appropriate for children of their age; and (2) children who are handicapped, as defined in 45 CFR 115.70(c).

(20 U.S.C. 240(e), 242(b), 1401(1).)

(2) "Low-rent public housing" means any low-rent public housing, whether or not owned by the United States, which is part of a low-rent housing project assisted under the United States Housing Act of 1937, section 516 of the Housing Act of 1949, or part B of title III of the Economic Opportunity Act of 1964.

(20 U.S.C. 240(e), 244(1)(c).)

(3) "Section 5(e)" means section 5(e) of Pub. L. 81-874.

(20 U.S.C. 240(e).)

(4) "Title I" means title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241a et seq.).
(20 U.S.C. 240(e).)

§ 115.81 Use of section 5(e) funds.

(a) *General.* Section 5(e)(3) of the Act requires that an applicant which receives a payment based on a determination under section 5(e)(1) of the Act (payments attributable to children residing on, or residing with a parent employed on, low-rent public housing) use the funds from that payment only for special programs and projects designed to meet the special educational needs of educationally deprived children.

(b) *Use priorities.* An applicant receiving funds under section 5(e) must use those funds in the order stated below.

An applicant agency first has a choice of using the section 5(e) funds for either priority (1) or priority (2), or both, if applicable. However, it must fulfill the requirements of priority (2), if applicable, before proceeding to priority (3). It must then fulfill the requirements of priority (3) before proceeding to priority (4). The priorities are:

(1) *Agencies with reduced title I allocations.* If the local educational agency has:

(i) Received reduced allocations of title I funds because of the revision of the title I distribution formula in section 103 of Pub. L. 93-380 (Education Amendments of 1974); or

(ii) Received funds under subpart C of title I (as in effect before repeal by Pub. L. 93-380) during the period of July 1, 1973 to June 30, 1975, then it may use section 5(e) funds to continue or supplement existing title I programs in title I eligible school attendance areas already receiving title I assistance.

(2) *Unserved title I eligible areas.* If the local educational agency has school attendance areas which are eligible for title I assistance but which are not served by a title I program, the local educational agency may use the section 5(e) funds to provide programs for educationally deprived children in those areas.

(3) *Other title I programs.* If all eligible title I school attendance areas which did not receive title I funds are served by a section 5(e) program, the local educational agency may use any balance of these funds to supplement existing title I programs in other title I eligible areas.

(4) *Other school attendance areas.* If title I or section 5(e) programs are provided for all title I eligible school attendance areas, the local educational agency may use these funds to carry out the same type of programs for educationally deprived children in other school attendance areas.

(20 U.S.C. 240(e), 242(b); S. Rept. No. 93-1026, p. 162 (1974).)

(c) *Section 5(e) funds supplementary to State and local funds.* An applicant agency must use section 5(e) funds in a manner which supplement and do not supplant State and local funds which are or would have been expend-

ed for the free public education of the children to be served by the use of the section 5(e) funds. As part of this requirement, applicant agencies must adhere to the following practices:

(1) The use of section 5(e) funds must not result in a decrease in the use of State or local funds for the educationally deprived children to be served which, in the absence of funds provided under section 5(e), would be made available for the education of those children. This includes State and local funds for general education purposes as well as for special education purposes.

(2) The use of section 5(e) funds must not result in a penalization, with respect to the use of State or local funds for their education, of the educationally deprived children to be served, as compared to other children whose education is provided by the applicant agency.

(3) The applicant agency may use section 5(e) funds to provide services not provided by funds from other sources. However, there may be State or local funds available to the applicant agency which are designated for the same services included in the section 5(e) program or project. If there are any of those funds available to that agency at the time it submits its section 5(e) proposal, then it must apply those funds in conjunction with the section 5(e) program or project.

(4) The applicant agency may not use the section 5(e) funds to provide services which the applicant agency is required to provide under State law or under a formal determination under title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, or section 504 of the Vocational Rehabilitation Act of 1973, as amended, or under a final court order.

(20 U.S.C. 240(d), (e), 242(b); S. Rept. 93-106, p. 162 (1974).)

(d) *Relation to section 5(d)(2) of the Act.* (1) Section 5(d)(2) of the Act provides that States having State aid programs designed to divide expenditures for children equally among local educational agencies in the State, which conform to subpart B, may consider payments received by an agency under Pub. L. 81-874 as local resources in determining the need for or the amount of State aid allocated to that agency. The regulation setting forth those standards appears in subpart G of this part.

(2) Whether or not a State has a program of State aid that meets the requirements of section 5(d)(2) of the Act, payments provided under section 5(e) may not be considered by a State in determining the need or amount of State aid which will be allocated to a local educational agency receiving those payments.

(20 U.S.C. 240(d)(2), (e), 242(b); S. Rept. 93-1026, pp. 162-163 (1974); S. Rept. No. 93-763, pp. 55-56 (1974); H. Rept. No. 93-805, pp. 42-43 (1974).)

(e) *Use of section 5(e) funds with other funds.* An applicant may not consolidate section 5(e) funds with funds from other sources, including other Federal funds. An applicant must keep records necessary to identify, for accounting and audit purposes, expenditures from section 5(e) funds for programs and projects specified in paragraph (b). However, section 5(e) funds may be used concurrently with funds from other sources in those programs and projects.

(20 U.S.C. 240(e), 20 U.S.C. 1231(c)(1)(C).)

(f) *Allowable expenditures.* An applicant agency which receives funds under section 5(e) must use those funds for expenditures which are directly related to the conduct of section 5(e) programs or projects, including expenditures for appropriate staff or instructional materials and supplies. These expenditures may also include:

(1) Expenditures for the construction of school facilities to meet the special educational needs of the educationally deprived children served with section 5(e) funds, but only if:

(i) The construction is essential to assure the success of the program or project serving those children, and

(ii) The construction project complies with the requirements of 45 CFR Part 100a, subpart K (Construction Requirements);

(2) Expenditures for equipment, exclusive of instructional materials and supplies, to meet the specific educational needs of the educationally deprived children in the program or project but only if:

(i) The equipment is essential to meet the needs of those children; and

(ii) The recipient agency has a staff trained in the use of the equipment to be acquired or has made provision for adequate staff training in the use of that equipment.

If section 5(e) funds are used for the acquisition of equipment and any financial advantage is realized through bargains, rebates, discounts, bonuses, free pieces of equipment (not used in the program or project contemplated by this paragraph) or other circumstances, the fair value of that financial advantage is not an allowable expenditure and shall not be credited as an expenditure of those funds.

(20 U.S.C. 235, 238, 240(e), 242(b).)

(g) *Use of property acquired with section 5(e) funds.* The applicant shall maintain title to and administrative control over property acquired with section 5(e) funds. The applicant shall use this property for the purposes provided in this section and shall not permit the property to be used to benefit any private school. The incidental use of the property for other purposes is permitted only for related educational purposes on public premises and only so long as the use does not interfere with the carrying out of a project under section 5(e).

(20 U.S.C. 240(e), 242(b).)

§ 115.82 Application procedures.

(a) *Claims for low-rent public housing children.* In accordance with the procedures set forth in subpart B of this part, an applicant agency must file in its regular application, initial claims for children who reside on or reside with a parent employed on low-rent public housing property. The Commissioner, however, will not make any payments based on those claims until the applicant agency has completed the steps set forth in paragraph (b) of this section.

(b) *Supplemental submissions.* The applicant agency must complete the following steps before it may receive any payments based on claims for low-rent public housing children.

(1) The applicant agency must submit to its State educational agency, as a supplement to its application filed under subpart B of this subpart, a document describing the proposed use of the section 5(e) funds. The document must establish that the applicant agency has complied with the requirements of §§ 115.81, 115.84, 115.85, 115.86, 115.87, and 115.88 of this Subpart. The State educational agency should retain this document, unless the Commissioner specifically requests the agency to forward it.

(2) The applicant agency must obtain a certification from the State educational agency, stating:

(i) The particular priority use(s) selected by the applicant agency in accordance with § 115.81 of this Subpart, and that the use(s) selected is appropriate;

(ii) That the proposed use(s) conforms to the requirements of this subpart; and

(iii) The amount of section 5(e) funds that the applicant agency will apply to the approved program or project.

This State certification must be based on a review of the document submitted by the applicant agency in accordance with paragraph (1) of this section. The State certification must be submitted to the Commissioner, either directly by the applicant agency or on behalf of the applicant agency by the State agency, before section 5(e) funds can be released.

(20 U.S.C. 240(e), 242(b); Sen. Rept. No. 93-1026, p. 162 (1974).)

(c) *Assurances.* An applicant agency which submits a claim based on children who live in low-rent public housing must provide the following assurances with its application filed under subpart B (Applications):

(1) An assurance that the section 5(e) funds will be used only for the purposes for which they were granted and in accordance with the requirements of that section of the Act and this regulation; and

(2) An assurance that the section 5(e) funds will be used in a manner which supplements and does not supplant State and local funds which are or which would be expended for the free public education of the children to be served by the use of the section 5(e) funds.

(20 U.S.C. 240-242(b).)

§ 115.83 Monitoring.

(a) The State educational agency should monitor the expenditure of section 5(e) funds by applicants for programs and projects certified by that agency in accordance with § 115.82(b) of this subpart. Whenever a State educational agency audits a title I program or project in a local educational agency which is also conducting a section 5(e) program or project, the State agency should also audit the section 5(e) program or project.

(b) If a State educational agency finds at any time that an applicant is not using any of its section 5(e) funds for the purposes certified by the State or in some other way is not complying with the requirements of this subpart, it should immediately notify the Commissioner.

(c) If the Office of Education or the Department of Health, Education, and Welfare has already audited an applicant's section 5(e) program or project, it is not expected that the State educational agency would audit the same program or project.

(20 U.S.C. 2401(e); Sen. Rept. No. 93-1026, p. 162 (1974); Cong. Rec. daily ed., July 31, 1974, H7396.)

§ 115.84 Needs assessment.

An applicant agency which submits a claim based on children who live in low-rent public housing must provide, as part of the document required to be submitted to the State educational agency under § 115.82(b) of this subpart, sufficient information to enable the State educational agency to determine that the applicant has made a needs assessment of the children to be served in its school. The steps required for this needs assessment are:

(a) *Review of existing data.* The local educational agency must review existing data on the performance of children in the agency's basic programs of instruction in all attendance areas. The purpose of the review is to determine the incidence and severity of educational deprivation among all children receiving free public education in all attendance areas.

(1) The data reviewed must include past evaluations, if any, of programs or projects that used section 5(e) funds in that agency.

(2) The agency must review data on children enrolled in private schools if the program or project for which section 5(e) funds will be used is designed to serve any of those children.

(3) If the agency has already reviewed data in connection with a needs assessment under title I for the fiscal year for which the section 5(e) funds are to be used, except for a review of past evaluations of projects funded solely with section 5(e) funds, the agency does not have to conduct another review under this paragraph.

(b) *Selection of project areas, target groups, and the needs to be served.* The local educational agency, on the basis of its findings from the review conducted under paragraph (a) must select:

(i) The project areas (in accordance with § 115.80(c)(2));

(ii) The age or grade levels at which it will operate the section 5(e) project(s); and

(iii) The types of educational needs to be addressed by the project(s).

(c) *Identification of target group children.* The applicant agency, using the data reviewed under paragraph (a), must identify all of the educationally deprived children in the areas to be served who are in the age or grade levels and have the type of educational needs identified under paragraph (b).

(d) *Identification of children most in need.* The local educational agency must secure any additional objective data which, in combination with the existing data specified in paragraph (a), will enable it to identify which of the educationally deprived children identified in paragraph (c) are most in need of special assistance.

(e) *Selection criteria.* The local educational agency must set forth specific criteria by which the educationally deprived children in the project areas will be chosen to receive section 5(e) services. An educationally deprived child may be included in a project even though he or she is not from a low-income family.

(f) *Diagnostic procedures.* The local educational agency must use adequate diagnostic procedures to determine the special educational needs of the children chosen to be served in a section 5(e) project.

(g) *Consultation.* In meeting the requirements under this section, the local educational agency must, to the extent feasible, consult with teachers, parents, and persons knowledgeable of the needs of private and public school children.

(20 U.S.C. 240(e), 242(b); S. Rept. No. 93-1026, p. 162 (1974); Cong. Rec. daily ed., July 31, 1974, H7396.)

§ 115.85 Project description, size, scope, and quality.

(a) *Project description.* As part of the document required to be submitted to the State educational agency under § 115.82(b), the applicant agency must provide a description of the section 5(e) project(s) which includes, for each project:

(1) The educational objectives of the project and the relationship of these objectives to the special educational needs identified by the diagnostic procedures required under § 115.84(f);

(2) The resources (including the type of staff and materials) to be used in the implementation of the projects and plans for their use;

(3) The time periods and instructional settings for the project services;

(4) The number of the children to be served and a general description of their special educational needs;

(5) The methods that will be used to evaluate the success of the project in attaining its objectives;

(6) A budget detailing the expenditures required for the implementation of the projects;

(7) The special educational needs and number of children, if any, who reside outside the project area and who will participate, as well as the manner of their participation; and

(8) Specific provisions for informing and consulting with parents concerning the services to be provided for their children under section 5(e), the performance of their children, and the ways in which those parents can assist their children in realizing the benefits those services are intended to provide.

(b) *Size, scope, and quality.* As part of the document required to be submitted to the State educational agency under § 115.82(b), the applicant agency must provide sufficient information for the State agency to determine that the section 5(e) program(s) or project(s) is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children to be served. In particular, the applicant agency must demonstrate that:

(1) The educational objectives of the project relate to one or more of the special educational needs of the participating children, as identified in § 115.84;

(2) The resources to be used in the project and the plans for their use are consistent with, and show reasonable promise of, meeting the objectives of the project;

(3) The evaluation plans comply with § 115.86 and are adequate for measuring the attainment of the objectives described in paragraph (b)(1) of this section;

(4) The expenditures for the project (as set forth in the budget) are not wasteful and are proposed for use

solely to meet the special educational needs of educationally deprived children identified in accordance with § 115.84;

(5) The project concentrates on a sufficiently limited number of services for a sufficiently limited number of educationally deprived children, identified in accordance with § 115.84, to show reasonable promise of meeting the educational objectives identified in paragraph (a) of this section;

(6) The project has not been designed to meet, nor will it have the effect of meeting, the general needs of schools or of the student body at large in a school or of a specified grade in a school;

(7) Any services or resources provided under section 5(e) will be offered only to those children who have been selected to participate in the project in accordance with § 115.84, except as approved under paragraph (b)(9) of this section;

(8) If services are provided in the regular classroom or in other settings in which children other than those properly selected to participate in the project will be present, these services will be directed to the selected children and the effectiveness of the project will not be impaired by the presence of children other than those selected to participate;

(9) If educationally deprived children residing outside the project area will participate, these requirements must be considered:

(i) Children are selected under the same criteria as the children from the project area;

(ii) Their participation will not result in the exclusion of children from the project area who meet these criteria;

(iii) The project will have been designed solely for the selected children from the project area; and

(iv) Participation of children from outside the project area will not impair the effectiveness of the project and will not result in any extra cost; and

(10) Services are equitably provided to all children with State aid and local funds without regard to the availability of section 5(e) funds in the applicant's schools for the educationally deprived children.

(c) *Relation to existing Title I programs or projects.* If the applicant agency proposes to use the section 5(e) funds to supplement, under § 115.81 (b)(1) or (b)(3), an existing Title I program or project it is conducting in a particular school attendance area, the agency must indicate this in the document provided the State educational agency under § 115.82. In that case, the applicant agency is not required to describe, in the detail required by paragraph (a) of this section, the basic program or project that will be supplemented. It must describe only how the section 5(e) will supplement that program or project.

(20 U.S.C. 240(e), 242(b); S. Rept. No. 93-1026, p. 162 (1974).)

§ 115.86 Measurement of educational achievement and evaluation of programs.

As part of the document required to be submitted to the State educational agency under § 115.82(b), the applicant agency must describe the procedures and techniques that it will use to evaluate, at least annually, the effectiveness of section 5(e) projects in meeting the special edueational needs of participating children. The description must include appropriate performance criteria and the instruments and methods to be used to objectively measure changes in the educational achievement of those children.

(a) The applicant agency must use objective standards or norms in measuring the effectiveness of section 5(e) projects for improving the educational achievement of the participating educationally deprived children.

(b) The applicant agency must evaluate the effectiveness of programs and projects for children enrolled in private schools who participated in them.

(20 U.S.C. 240(e), 242(b); S. Rept. No. 93-1026, p. 162 (1974).)

§ 115.87 Parent advisory councils.

(a) *Scope.* Section 141(a)(14) of Title I and § 116a.25 of the Title I regulation (45 CFR Part 116a.25) require the establishment of district advisory councils and school advisory councils by local educational agencies receiving assistance under Title I. This section of this subpart sets forth the rules for establishing and operating of district and school advisory councils for projects assisted under section 5(e).

(b) *Section 5(e) projects and existing Title I district council.* If a local educational agency which receives funds under section 5(e) has established a district advisory council under section 141(a)(14) of Title I and § 116a.25 of the Title I regulation, that agency may designate that council to serve as the district advisory council for projects supported in whole or in part with funds under section 5(e), if it takes steps to insure that:

(1) The functions and duties of the council are extended to these projects; and

(2) The district advisory council includes at least one member who is selected by parents in a project area (if any) having a project served with funds under section 5(e) but not with funds under Title I. See § 115.81 (b)(1) and (b)(3).

(c) *Section 5(e) projects in agencies without Title I district councils.* If an applicant agency which receives section 5(e) funds does not have an existing Title I district advisory council, it must establish a district advisory council for section 5(e) projects in the same way that Title I district advisory councils are established under § 116a.25 of the Title I regulation.

(d) *Section 5(e) projects and existing Title I school advisory councils.* If an applicant agency which receives section 5(e) funds uses these funds for projects in a school attendance area which has an existing Title I school advisory council, the agency may designate that council to serve as the school advisory council for projects supported in whole or in part with funds under section 5(e), if the functions and duties of the council are extended to those projects. See § 115.81 (b)(1) and (b)(3).

(e) *Section 5(e) projects in school attendance areas without Title I school advisory councils.* If an applicant agency which receives section 5(e) funds proposes to use those funds in a school attendance area which does not have an existing Title I school advisory council, it must establish a school advisory council for that attendance area in the same way that Title I school advisory councils are established under § 116a.25 of the Title I regulation.

(f) *General rules for advisory councils.* The following rules apply to advisory councils designated or established by an applicant agency under this section:

(1) Parents of children who are participating (or will participate) in a project for which section 5(e) funds are used are eligible for membership on a district advisory council or school advisory council to the same extent that they would be under § 116a.25 of the Title I regulation if their children participated in projects supported with Title I funds.

(2) Parents in school attendance areas served by a project supported with section 5(e) funds are eligible to participate in the selection of members of the district and school advisory councils.

(3) The advisory functions of these councils and their rights to access to information under § 116a.25 of the Title I regulation extend to projects supported with section 5(e) funds.

(g) *Supplements to applications.* As part of the document required to be submitted to the State educational agency under § 115.82(b)(2), an applicant agency which receives section 5(e) funds must include a description of the steps which it has taken or is taking to meet the requirements of this section. The description must be sufficient to permit the State educational agency making the certification under § 115.82(b)(2) to determine that the steps described by the applicant

agency are adequate to meet the requirements of this section.

(20 U.S.C. 240(e); 242(b); S. Rept. No. 93-1026, p. 162 (1974).)

§ 115.88 Participation of private school children.

(a) *Participation permitted.* Applicants receiving section 5(e) funds may provide services with those funds to educationally deprived children attending private schools with those funds.

(b) *Rules for participation.* If an applicant includes children attending private schools in a section 5(e) program or project, the use of section 5(e) funds for those children is subject to the following conditions:

(1) Educationally deprived children attending private schools must be selected for the section 5(e) program or project on the same basis as children attending public schools. The supplement to the application submitted under § 115.82(b) must state:

(i) The number of private school children who were found to be educationally deprived according to specific criteria used under § 115.84;

(ii) The number of those children who are expected to be included in the section 5(e) program or project: and

(iii) The degree and manner of their expected participation.

(2) The programs or projects in which those children are included must meet the children's special educational needs rather than the general needs of the private schools which they attend, the student body of those schools, or children within a specific grade in those schools. Provisions for serving educationally deprived children attending private schools may not include the financing of the existing level of instruction in the private schools.

(3) Any project involving the participation at the same site of children attending private schools and children attending public schools must avoid, as much as possible, classes which are separated by school attendance or religious affiliation of the children.

(4) Public school personnel may be made available in other than public school facilities, but only when necessary to provide special services (such as therapeutic, remedial, or welfare services, broadened health services, and guidance and counseling services) for those educationally deprived children for whom those services were designed, and only when those services are not normally provided by the private schools.

(5) Provisions for special educational services for educationally deprived children attending private schools may not include paying salaries for teachers or other employees of private schools, except for services performed outside their regular hours of duty and under public supervision and control.

(6) An applicant agency which conducts a project including educationally deprived children attending private schools must maintain continuing administrative direction and control over those services and over the use of equipment required to provide those services.

(20 U.S.C. 240(e), 242(b); S. Rept. No. 93-1026, p. 162 (1974).)

§ 115.89 Applicability of other statutory and regulatory requirements.

(a) *Applicability of general provisions regulations.* Relevant provisions contained in parts 100a and 100c of this chapter are applicable to programs conducted under section 5(e), with the following exceptions:

Sec.
100a.15 Applications for grants or contracts.
100a.26 Review of applications.
100a.27 Disposition of applications.
100a.31 Preapplications.

Subpart C—Application Forms for State and Local Governments

100a.54 Duration of projects.
100a.62 Payment methods for nonconstruction projects.
100a.71 Checks-paid basis letter of credit.

Subpart P—Financial Reporting Requirements

100a.405 Request for advance or reimbursement.

Subpart Q—Monitoring and Reporting of Program Performance

100a.432 Performance reports for nonconstruction projects.

(20 U.S.C. 1221c(b)(1); 20 U.S.C. 242(b); OMB Cir. A102.)

(b) *Applicability of civil rights and related requirements.* Payments provided under section 3(d)(2)(C) are subject to the published requirements of the following laws and regulations: Title VI of the Civil Rights Act of 1964 (45 CFR Part 80); Title IX of the Educational Amendments of 1972 (45 CFR Part 86); and section 504 of the Vocational Rehabilitation Act of 1973 (45 CFR Part 84).

(42 U.S.C. 200d; 20 U.S.C. 1681, 29 U.S.C. 794.)

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federal register

MONDAY, MAY 8, 1978
PART III



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

■

ADVISORY CIRCULAR CHECKLIST

[and Status of Federal Aviation Regulations]

[4910–13]

SPECIAL NOTICE

To all recipients of the Advisory Circular Checklist

This will be the last issue of the FAA Advisory Circular Checklist to appear in the FEDERAL REGISTER. Future revisions to the checklist will be printed in standard advisory circular format and will continue to be issued triannually. Distribution of the checklist will be unaffected at the present time. Present plans call for a modification of the distribution system in the future to allow for greater copy requirement latitude on initial distribution of the checklist. Information regarding this change will be announced in the checklist as soon as the program is established. Additionally, the information pertaining to the Status of the Federal Aviation Regulations will be discontinued with this issue of the advisory circular checklist. FAR information will continue to be published in Advisory Circular 00–44, Status of the Federal Aviation Regulations, which is free from FAA and will be issued as changes warrant.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC 00-2NN Effective March 15, 1978]

ADVISORY CIRCULAR CHECKLIST [AND STATUS OF FEDERAL AVIATION REGULATIONS]

1. *Purpose.* This notice contains the revised checklist of current FAA advisory circulars (and the status of Federal Aviation Regulations) as of March 15, 1978.

2. *Explanation.* The FAA issues advisory circulars to inform the aviation public in a systematic way of nonregulatory material of interest. Unless incorporated into a regulation by reference, the contents of an advisory circular are not binding on the public. Advisory circulars are issued in a numbered-subject system corresponding to the subject areas of the Federal Aviation Regulations (14 CFR Ch. I). This checklist is issued triannually to list all current advisory circulars and also includes a checklist showing the status of the Federal Aviation Regulations.

3. *The Circular Numbering System.*

a. *General.* The advisory circular numbers relate to the FAR subchapter titles and correspond to the Parts, and when appropriate, to the specific sections of the Federal Aviation Regulations. Circulars of a general nature bear a number corresponding to the number of the general subject (subchapter) in the FAR's. A general subject number is used *only* when a circular covers more than one Part.

b. *General subject numbers.* The general subject matter areas and related numbers are as follows:

General Subject Number and Subject Matter

00 General.
10 Procedural.
20 Aircraft.
60 Airmen.
70 Airspace.
90 Air Traffic Control and General Operations.
120 Air Carrier and Commercial Operators and Helicopters.
140 Schools and Other Certified Agencies.
150 Airports.
170 Air Navigational Facilities.
180 Administrative.
210 Flight Information.

Within the General Subject Number Areas, specific selectivity in advisory circular mail lists is available corresponding to the applicable FAR Parts. For example: under the 60 general subject area, separate mail lists for advisory circulars issued in the 61, 63, 65, or 67 series are available.

c. *Breakdown of subject numbers.* When the volume of circulars in a series warrants a subsubject breakdown, the general number is followed by a slash and a subsubject number. Material in the 150 series, Airports, is issued under the following subsubjects:

Number and Subject

150/1900 Defense Readiness Program.
150/4000 Resource Management.
150/5000 Airport Planning.
150/5100 Federal-aid Airport Program.
150/5150 Surplus Airport Property Conveyance Programs.
150/5190 Airport Compliance Program.
150/5200 Airport Safety—General.
150/5210 Airport Safety Operations (Recommended Training, Standards, Manning).
150/5220 Airport Safety Equipment and Facilities.
150/5230 Airport Ground Safety System.
150/5240 Civil Airports Emergency Preparedness.
150/5300 Design, Construction, and Maintenance—General.
150/5320 Airport Design.
150/5325 Influence of Aircraft Performance on Aircraft Design.
150/5335 Runway, Taxiway, and Apron Characteristics.
150/5340 Airport Visual Aids.
150/5345 Airport Lighting Equipment.
150/5360 Airport Buildings.
150/5370 Airport Construction.
150/5380 Airport Maintenance.
150/5390 Heliports.
150/5900 Planning Grants for Airports.

d. *Individual circular identification numbers.* Each circular has a subject number followed by a dash and a sequential number identifying the individual circular. This sequential number is not used again in the same subject series. Revised circulars have a letter A, B, C, etc., after the sequential number to show complete revisions. Changes to circulars have CH 1, CH 2, CH 3, etc., after the identification number on pages that have been changed. The date on a revised page is changed to the effective date of the change.

4. *The Advisory Circular Checklist.*

a. *General.* Each circular issued is listed numerically within its subject-number breakdown. The identification number (AC 120-1), the change number of the latest change, if any, to the right of the identification number, the title, and the effective date for each circular are shown. A brief explanation of the contents is given for each listing.

b. *Omitted numbers.* In some series, sequential numbers are missing. These numbers were assigned to advisory circulars still in preparation which will be issued later or were assigned to advisory circulars that have been canceled.

c. *Free and sales circulars.* This checklist contains advisory circulars that are for sale as well as those distributed free of charge by the Federal Aviation Administration. A list of circulars sold by the Superintendent of Documents is shown at the end of the numerical list of AC's. Please use care when ordering circulars to ensure that they are ordered from the proper source.

d. *Internal directives for sale.* A list of certain internal directives sold by the Superintendent of Documents is shown at the end of the checklist. These documents are not identified by advisory circular numbers, but have their own directive numbers.

5. *How to get circulars.*

a. When a price is listed after the description of a circular, it means that this circular is for sale by the Superintendent of Documents. When (Sub.) is included with the price, the advisory circular is available on a subscription basis only. After your subscription has been entered by the Superintendent of Documents, supplements or changes to the basic document will be provided automatically at no additional charge until the subscription expires. When no price is given, the circular is distributed free of charge by FAA.

b. Request free advisory circulars shown without an indicated price from:

U.S. Department of Transportation, Publications Section M 443.1, Washington, D.C. 20590

c. Persons who want to be placed on FAA's mailing list for future circulars should write to:

U.S. Department of Transportation, Distribution Requirements Section, M 482.3, Washington, D.C. 20590.

NOTE.—Be sure to identify the subject matter numbers and titles shown in paragraph 3b because separate mailing lists are maintained for each advisory circular subject series. Checklists and circulars issued in the General series will be distributed to every addressee on each of the subject series lists. Persons requesting more than one subject classification may receive more than one copy of related circulars and this

checklist because they will be included on more than one mailing list. Persons already on the distribution list for AC's will automatically receive related circulars.

d. Order advisory circulars and internal directives with purchase price given from:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

or from any of the following Government bookstores located throughout the United States:

GPO Bookstore, 9920 B Parkway East, Roebuck Shopping Center, Birmingham, AL 35206
GPO Bookstore, Fedreal Building, Room 2039, 300 North Los Angeles Street, Los Angeles, CA 90012.
GPO Bookstore, Federal Building, Room 1023 450 Golden Gate Avenue, San Francisco, CA 94102.
GPO Bookstore, Federal Building, U.S. Courthouse, Room 1421, 1961 Stout Street, Denver, CO 80202.
GPO Bookstore, 720 North Main, Majestic Bldg., Pueblo, CO 81003.
GPO Bookstore, Federal Building, Room 158, 400 West Bay Street, Jacksonville, FL 32202.
GPO Bookstore, Room 100, Federal Building, 275 Peachtree Street NE., Atlanta, GA 30303.
GPO Bookstore, Everett McKinley Dirksen Building, Room 1463, 14th Floor, 219 South Dearborn Street, Chicago, IL 60604.
GPO Bookstore, Room G25, John F. Kennedy Federal Building, Sudbury Street, Boston, MA 02203.
GPO Bookstore, Federal Office Building, Suite 160, 477 Michigan Ave., Detroit, MI 48226.
GPO Bookstore, Federal Building, Room 135, 601 East 12th Street, Kansas City, MO 64106.
GPO Bookstore, Room 110, 26 Federal Plaza, New York, NY 10007.
GPO Bookstore, Room 207, Federal Office Bldg., 200 N. High St., Columbus, OH 43215.
GPO Bookstore, Federal Office Building, Room 171, 1240 East Ninth Street, Cleveland, OH 44199.
GPO Bookstore, Federal Office Bldg., Room 1214, 600 Arch St., Philadelphia, PA 19106.
GPO Bookstore, 45 College Center, 9319 Gulf Freeway, Houston, TX 77017.
GPO Bookstore, Room 1C48, Federal Building, U.S. Courthouse, 100 Commerce Street. Dallas, TX 75242.
GPO Bookstore, Federal Building, Room 190, 915 Second Ave., Seattle, WA 98174.
GPO Bookstore, Federal Building, Room 190, 519 E. Wisconsin Avenue, Milwaukee, WI 53202.
GPO Bookstore, 710 North Capitol Street NW., Washington, D.C. 20402.

Special Notice

Orders for subscription items can no longer be accepted by the bookstores. These orders must be placed directly with the Superintendent of Documents, Washington, D.C. 20402.

Send check or money order with your order to the Superintendent of Documents. Make the check or money order payable to the Superintendent of Documents in the amounts indicated in the list. Orders for mailing to foreign countries should include an additional 25 percent of the total price to cover handling. No c.o.d. orders are accepted.

6. *Reproduction of Advisory Circulars.* Advisory circulars may be reproduced in their entirety or in part without permission from the Federal Aviation Administration.

7. *Cancellations.* The following advisory circulars are canceled:

AC 00-2MM Advisory Circular Checklist, 11-15-77. Canceled by AC 00 2NN Advisory Circular Checklist, 3-15-78.
AC 20-6CC U.S. Civil Aircraft Register, July 1977, Canceled by AC20-6DD U.S. Civil Aircraft Register, December 1977.
AC 20-54 Hazards of Radium-Activated Luminous Compounds Used on Aircraft Instruments, 10-24-67. Canceled.
AC 21.303-2 Availability of Listing, "Parts Manufacturer Approvals", March 31, 1976. Canceled by AC 21.303-2A Availability of Listing, "Parts Manufacturer Approvals"—1977.
AC 36-1A Certificated Airplane Noise Levels, 7-21-75. Canceled by AC 36-1B Certificated Airplane Noise Levels, 12-5-77.
AC 36-2 Measured or Estimated (Uncertificated) Airplane Noise Levels of Aircraft, 9-21-76. Canceled by AC 36-2A Measured or Estimated (Uncertificated) Airplane Noise Levels, 2-6-78.
AC 43-6 Automatic Pressure Altitude Encoding Systems and Transponders Maintenance and Inspection Practices, 9-19-74. Canceled by AC 43-6A Automatic Pressure Altitude Encoding Systems and Transponders Maintenance and Inspection Practices, 11-11-77.
AC 43-8 Maintaining Hot Air Balloons in an Airworthy Condition, 1-2-75. Canceled.
AC 43.13-2 Acceptable Methods, Techniques, and Practices—Aircraft Alterations, 4-19-66. Canceled by AC 43.13-2A Acceptable Methods, Techniques, and Practices—Aircraft Alterations, 6-9-77.
AC 60 15A Publication of Revised FAA Written Test Guides, 6-9-77. Canceled.
AC 61-8C Instrument Rating (Airplane) Written Test Guide, 5-31-72. Canceled by AC 61-8D Instrument Rating Written Test Guide, 6-9-77.
AC 61-18D Airline Transport Pilot—Airline—Written Test Guide, 2-14-75. Canceled by AC 61-18E Airline Transport Pilot—Airplane—Written Test Guide, 5-6-77.
AC 61-43A Glider Pilot Written Test Guide—Private and Commercial, 1-12-72. Canceled.
AC 61-45 Instrument Rating (Helicopter) Written Test Guide, 1-24-68. Canceled by AC 61-8D Instrument Rating Written Test Guide, 6-9-77.
AC 61-64 Flight Test Guide—Instrument Pilot Helicopter, 7-23-73. Canceled by AC 61-64A Flight Test Guide—Instrument Pilot Helicopter, 5-25-77.
AC 70/7460-2F Proposed Construction or Alteration of Objects that May Affect the Navigable Airspace, 1-22-76. Canceled by AC 70/7460-2G Proposed Construction or Alteration of Objects That May Affect the Navigable Airspace, 11-30-77.
AC 90-50A Air Traffic Control Radio Frequency Assignment Plan for VFR and IFR Communications, 2-7-75. Canceled by AC 90-50B VHF Radio Frequency Assignment Plan for Aeronautical Operations, 12-12-77.
AC 90-72 Minimum Safe Altitude Warning (MSAW), 11-30-76. Canceled by AC 90-72A Minimum Safe Altitude Warning (MSAW), 1-31-78.
AC 91-13A Cold Weather Operations of Aircraft, 1-2-70. Canceled by AC 91-13B Cold weather Operation of Aircraft, 1-17-78.
AC 91-37 Truth in Leasing, 11-9-72. Canceled by AC 91-37A Truth in Leasing, 1-16-78.
AC 120-28A Criteria for Approval of Category IIIa Landing Weather Minima, 12-14-71. Canceled by AC 120-28B Criteria for Approval of Category IIIa Landing. Weather Minima, 12-1-77.
AC 121-3Q Maintenance Review Board Reports, 9-3-76. Canceled.
AC 150/5000-1 Cancellation of Obsolete Publications Issued by Standards Division, Airports Service, 4-17-70. Canceled.
AC 150/5345-12A Specification for L-801 Beacon, 5-12-76. Canceled by AC 150/5345-12B Specification for L-801 Beacon, 9-8-77.
AC 150/5200-7 Safety on Airports During Maintenance of Runway Lighting, 1-24-68. Canceled.

8. *Additions.* The following advisory circulars are added to the list.

AC 00-2NN Advisory Circular Checklist, 3-15-78.
AC 00-53 FAA Computer Software Quality Program, 1-18-78.
AC 20-6DD U.S. Civil Aircraft Register, (3-vol. set), Dec. 1977.
AC 20-7P General Aviation Inspection Aids:
Supplement 3, November 1977.
Supplement 4, December 1977.
Supplement 5, January 1978.
Supplement 6, February 1978.
AC 20-102 Installation and Flight Testing of Equipment Installed in Aircraft, 12-7-77.
AC 36-1B Certificated Airplane Noise Levels, 12-5-77.
AC 36-2A Measured or Estimated (Uncertificated) Airplane Noise Levels, 2-6-78.
AC 43-6A Automatic Pressure Altitude Encoding Systems and Transponders Maintenance and Inspection Practices, 11-11-77.
AC 43.13-2A Acceptable methods, Techniques, and Practices—Aircraft Alterations, 6-9-77.
AC 61-8D Instrument Rating Written Test Guide, 6-9-77.
AC 61-18E Airline Transport Pilot—Airplane—Written Test Guide, 5-6-77.
AC 61-64A Flight Test Guide—Instrument Pilot Helicopter, 5-25-77.
AC 61-85 Flight Instructor Instrument—Rotorcraft/Helicopter—Written Test Guide, 7-5-77.
AC 70/7460-2G Proposed Construction or Alteration of Objects That May Affect the Navigable Airspace, 11-30-78.
AC 90-50B VHF Radio Frequency Assignment Plan for Aeronautical Operations, 12-12-77.
AC 90-72A Minimum Safe Altitude Warning (MSAW), 1-31-78.
AC 91-13B Cold Weather Operation of Aircraft, 1-17-78.
AC 91-37A Truth in Leasing, 1-16-78.
AC 120-28B Criteria for Approval of Category IIIa Landing Weather Minima, 12-1-77.
AC 150/5050-6 Airport-Land Use Compatibility Planning, 12-30-77
AC 150/5200-23 CH 1 Airport Snow and Ice Control, 2-6-78.
AC 150/5300-9 CH 1 Predesign and Preconstruction Conferences (ADAP Projects), 11-11-77.

AC 150/5340-24 CH 1 Runway and Taxiway Edge Lighting System, 11-25-77.
AC 170-13 Approach Lighting System Configuration and Energy Conservation, 9-6-77.

ADVISORY CIRCULAR CHECKLIST

Notice

Superintendent of Documents stock numbers have been included to aid Superintendent of documents personnel in processing orders. Please use them when ordering—along with the title and FAA number. To avoid unnecessary delays, do not order single-sales material and subscription-sales material on the same order form, as orders are separated for processing by different departments when they arrive at Superintendent of Documents. Be sure your name and and address appears on each list.

NOTICE

Prices shown are those in effect as of March 15, 1978. Prices are subject to change without notice and the price that will be charged on your order will be those in effect as of the date your order is processed.

General

SUBJECT NO. 00

00-1 The Advisory Circular System (12-4-62).

Describes the FAA Advisory Circular System.

00-2NN Advisory Circular Checklist (3-15-78).

Transmits the revised checklist of current FAA advisory circulars [and the status of the Federal Aviation Regulations] as of 3-15-78.

00-6A Aviation Weather (3-3-75).

Provides an up-to-date and expanded text for pilots and other flight operations personnel whose interest in meteorology is primarily in its application to flying. ($4.55 Supt. Docs.) SN 050-007-00283-1.

00-7A State and Regional Disaster Airlift (SARDA) Planning (6-3-74).

Provides guidance for the development and implementation of State and Regional Disaster Airlift plans governing the use of general avaiation aircraft during national emergencies and natural disasters.

00-7A CH 1 Transmits revised material consisting of procedural changes for insertion in the basic (1-6-77).

00-21 Shoulder Harness (10-5-66).

Provides information concerning the installation and use of shoulder harnesses by pilots in general aviation aircraft.

00-24 Thunderstorms (6-12-68).

Contains information concerning flights in or near thunderstorms.

00-25 Forming and Operating a Flying Club (3-24-69).

Provides preliminary information that will assist anyone or any group of people interested in forming and operating a flying club ($0.75 Supt. Docs.) SN 050-007-00065-1.

00-26 Definitions of "U.S. National Aviation Standards" (1-22-69).

Informs the aviation community of the approval by the FAA Administrator of a definition of U.S. National Aviation Standards, the need for such standards, and their relationship to the Federal Aviation Regulations.

00-28 Communications Interference Caused by Sticking Microphone Buttons (8-6-69).

Alerts the industry of communications interference from undesired radiofrequency transmissions.

00-30 Rules of Thumb for Avoiding or Minimizing Encounters with Clear Air Turbulence (3-5-70).

Brings to the attention of pilots and other interested personnel, the "Rule of Thumb" for avoiding or minimizing encounters with clear air turbulence (CAT).

00-31 U.S. National Aviation Standard for the VORTAC System (6-10-70).

Informs the aviation community of the establishment and content of the U.S. National Aviation Standard for the VORTAC (VOR-TACAN-DME) System.

00-32 Civil Air Patrol and State and Regional Defense Airlift Relationships (7-2-70).

Advises interested persons of the Memorandum of Understanding between CAP and FAA, and provides additional guidance to further improve the use of non-air carrier aircraft in time of national emergency.

00-33A Nickel-Cadmium Battery Operational, Maintenance, and Overhaul Practices (2-14-73).

Provides guidelines for more reliable nickel-cadmium battery operation through proper operational and maintenance practices, and has been reissued to include reconditioning information.

00-34A Aircraft Ground Handling and Servicing (7-29-74).

Contains information and guidance for the servicing and ground handling of aircraft.

00—41A FAA Quality Control System Certification Program (11-3-75).

Describes the FAA Quality Control System Certification Program and the mechanics of implementation. It is intended for guidance and information only.

00—44H Status of the Federal Aviation Regulations (9-30-77).

List FAR prices, and provides ordering instructions for purchasing the regulations.

00—45A Aviation Weather Services (4-28-77).

Supplements AC 00-6A, Aviation Weather, in that it explains the weather service in general and the use and interpretation of reports, forecasts, weather maps, and prognostic charts in detail. Is an excellent source of study for pilot certification examinations. ($3.00 Supt. Docs.) SN 050-007-00392-7.

00—46A Aviation Safety Reporting Program (3-31-76).

Advises that the FAA will modify the Aviation Safety Reporting Program, effective April 15, 1976 by utilizing NASA as a third party to receive and analyze the aviation safety reports. This study invites pilots, controllers, and other users of the airspace or any other person to report to NASA actual or potential discrepancies and difficiencies involving the safety of aircraft operations.

00—50 Low Level Wind Shear (4-8-76).

Provides guidance for recognizing the meteorological situations that produce the phenomenon widely known as low level wind shear.

00—52 Ozone Irritation During High Altitude Flight (7-21-77).

Defines ozone irritation, discusses its causes and symptoms, and describes a means of dealing with the problem should it occur in flight.

00-53 FAA Computer Software Quality Program (1-18-78).

Describes the FAA computer software quality program and the mechanics of implementation. For guidance and information only.

Procedural

SUBJECT NO. 10

11—1A Airspace Rule-Making Proposals and Changes to Air Traffic Control Procedures (12-21-72).

Emphasizes the need for the early submission of proposal involving airspace rule-making activity or changes to existing procedures for the control of air traffic.

11—2 Notice of Proposed Rulemaking Distribution System (12-17-75).

Provides the public with information relative to participation in the FAA rulemaking process and explains the availability of the Notices.

Aircraft

SUBJECT NO. 20

20-3C Status and Availability of Military Handbooks and ANC Bulletins for Aircraft (6-1-73).

Announces the status and availability of Military Handbooks and ANC Bulletins prepared jointly with FAA, Navy and Air Force.

20-5D Plane Sense (2-11-76).

Provides general aviation information for the private aircraft owner and outlines requirements of owning and operating a personal type airplane.

20-6DD U.S. Civil Aircraft Register (3-Vol. set) (Dec. 1977).

Lists all active U.S. civil aircraft by registration number ($19.00 Supt. Docs.) SN 050-007-00408-7.

20-7P General Aviation Inspection Aids, Summary (Aug. 1977).

Provides the aviation community with a uniform means for interchanging service experience that may improve the durability and safety of aeronautical products. Of value to mechanics, operators of repair stations, and others engaged in the inspection, maintenance, and operation of aircraft general. ($9.00; $11.25 foreign—Sub. Supt. Docs.) SN050-011-90058-6.

20-7P Supplement 1 Sept. 1977.

20-7P Supplement 2 Oct. 1977.

20-7P Supplement 3 Nov. 1977.

20-7P Supplement 4 Dec. 1977.

20-7P Supplement 5 Jan. 1978.

20-7P Supplement 6 Feb. 1978.

20-9 Personal Aircraft Inspection Handbook (12-2-64).

(Out of print. Being revised.)

Provides a general guide, in simple, nontechnical language, for the inspection of aircraft. Reprinted 1972. ($1.90 Supt. Docs.) SN 050-011-00001-1.

20-17B Surplus Aircraft of the Armed Forces (10-11-72).

Sets forth the method of obtaining copies of Federal Aviation Regulations which might be required for certification of surplus military aircraft.

20-18A Qualification Testing of Turbo-jet Engine Thrust Reversers (3-16-66).

Discusses the requirements for the qualification of thrust reversers and sets forth an acceptable means of compliance with the tests prescribed in Federal Aviation Regulations, Part 33, when run under nonstandard ambient air conditions.

20-23D Interchange of Service Experience—Mechanical Difficulties (2-12-71).

Provides information on the voluntary exchange service experience data used in improving durability and safety of aeronautical products.

20-24A Qualification of Fuels, Lubricants, and Additives (4-1-67).

Establishes procedures for the approval of the use of subject materials in certificated aircraft.

20-27B Certification and Operation of Amateur-Built Aircraft (4-20-72).

Provides information and guidance concerning certification and operation of amateur-built aircraft, including gliders, free balloons, helicopters, and gyroplanes, and sets forth an acceptable means, not the sole means, of compliance with FAR Part 21 and FAR Part 91.

20-28A Nationally Advertised Construction Kits, Amateur-Built Aircraft (12-29-72).

Advises persons contemplating the use of nationally advertised kits for the construction of an aircraft, that certain kits when used could render the aircraft ineligible for the issuance of an experimental certificate as an amateur-built aircraft.

20-29B Use of Aircraft Fuel Anti-icing Additives (1-18-72).

Provides information on the use of anti-icing additives PFA-55MB and Mil-I-27686 as an acceptable means of compliance with the FARs that require assurance of continuous fuel flow under conditions where ice may occur in turbine aircraft fuel systems.

20-30A Airplane Position Lights and Supplementary Lights (4-18-68).

Provides an acceptable means for complying with the position light requirements for airplane airworthiness and acceptable criteria for the installation of supplementary lights on airplanes.

20-32B Carbon Monoxide (CO) Contamination in Aircraft—Detection and Prevention (11-24-72).

Provides information on the potential dangers of carbon monoxide contamination from faulty engine exhaust systems or cabin heaters of the exhaust gas heat exchanger type.

20-33B Technical Information Regarding Civil Aeronautics Manuals 1, 3, 4a, 4b, 5, 6, 7, 8, 9, 13 and 14 (5-1-75).

Advises the public that policy information contained in the subject Civil Aeronautics Manuals may be used in conjunction with specific sections of the Federal Aviation Regulations.

20-34B Prevention of Retractable Landing Gear Failures (7-13-77).

Provides information and suggested procedures to minimize landing accidents involving aircraft having retractable landing gear.

20-35B Tie-Down Sense (4-19-71).

Provides information of general use on aircraft tie-down techniques and procedures.

20-36F Index of Materials, Parts, and Applicances Certified Under the Technical Standard Order System—July 1, 1976 (9-9-76).

Lists the materials, parts, and applicances for which the Administrator has received statements of conformance under the Technical Standard Order system as of July 1, 1976. Such products are deemed to have met the requirements for FAA approval as provided in Part 37 of the Federal Aviation Regulations.

20—37B Aircraft Metal Propeller Blade Failure (9-12-74).

Provides information and suggested procedures to increase service life and to minimize blade failures of metal propellers.

20—38A Measurement of Cabin Interior Emergency Illumination in Transport Airplanes (2-8-66).

Outlines acceptable methods, but not the only methods, for measuring the cabin interior emergency illumination on transport airplanes, and provides information as to suitable measuring instruments.

20—40 Placards for Battery-Excited Alternators Installed in Light Aircraft (8-11-65).

Sets forth an acceptable means of complying with placarding rules in Federal Aviation Regulations 23 and 27 with respect to battery-excited alternator installations.

20—41A Substitute Technical Standard Order (TSO) Aircraft Equipment (4-5-77).

Sets forth an acceptable means for complying with rules governing aircraft equipment installations in cases involving the substitution of technical standard order or equipment for functionally similar TSO approved equipment.

20—42 Hand Fire Extinguishers in Transport Category Airplanes and Rotorcraft (9-1-65).

Sets forth acceptable means (but not the sole means) of compliance with certain hand fire extinguisher regulations in FAR 25 and FAR 29, and provides related general information.

AC 20—43C Aircraft Fuel Control (10-20-76).

Alerts the aviation community to the potential hazards of inadvertent mixing or contamination of turbine and piston fuels, and provides recommended fuel control and servicing procedures.

20—44 Glass Fiber Fabric for Aircraft Covering (9-3-65).

Provides a means, but not the sole means, for acceptance of glass fiber fabric for external covering of aircraft structure.

20—45 Safetying of Turnbuckles on Civil Aircraft (9-17-65).

Provides information on turnbuckle safetying methods that have been found acceptable by the FAA during past aircraft type certification programs.

20—46 Suggested Equipment for Gliders Operating Under IFR (9-23-65).

Provides guidance to glider operators on how to equip their gliders for operation under instrument flight rules (IFR), including flight through clouds.

20—47 Exterior Colored Band Around Exits on Transport Airplanes (2-8-66).

Sets forth an acceptable means, but not the only means, of complying with the requirement for a 2-inch colored band outlining exits required to be openable from the outside on transport airplanes.

20—48 Practice Guide for Decontaminating Aircraft (5-5-66).

The title is self-explanatory.

20—52 Maintenance Inspection Notes for Douglas DC-6/7 Series Airacraft (8-24-67). (Consolidated Reprint—January 1974, includes Change 1).

Describes maintenance inspection notes which can be used for the maintenance support of certain structural parts of DC-6 6/7 series aircraft.

20—53 Protection of Aircraft Fuel System Against Lightning (10-6-67).

Sets forth acceptable means, not the sole means, by which compliance may be shown with fuel system lightning protection airworthiness regulations.

20-55 Turbine Engine Overhaul Standard Practices Manual—Maintenance of Fluorescent Penetrant Inspection Equipment (1-22-68).

Advises operators of the necessity for periodic checking of black light lamps and filters used during fluorescent penetrant inspection of engine parts.

20-56A Marking of TSO-C72b Individual Flotation Devices (4-1-75).

Outlines acceptable methods for marking individual flotation devices which also serve as seat cushions.

20-57A Automatic Landing Systems (ALS) (1-12-71).

Sets forth an acceptable means of compliance, but not the only means, for the installation approval of automatic landing systems in transport category aircraft which may be used initially in Category II operations. Approval of these aircraft for use under such conditions will permit the accumulation of data for systems which may be approved for Category IIIa in the future.

20-59 Maintenance Inspection Notes for Convair 240, 340/440, 240T, and 340T Series Aircraft (2-19-68).

Describes maintenance inspection notes which can be used for the maintenance support of certain structural parts of Convair 240, 340/440, 240T, and 340T series aircraft.

20-59 CH 1 (8-24-72).

Provides additional material for Convair Models 240 and 600/240D; Models 340/440 and 640/340D/440D series aircraft Maintenance inspection programs.

20-60 Accessibility to Excess Emergency Exits (7-18-68).

Sets forth acceptable means of compliance with the "readily accessible" provisions in the Federal Aviation Regulations dealing with excess emergency exits.

20-62C Eligibility, Quality, and Identification of Approved Aeronautical Replacement Parts (8-26-76).

Provides information relative to the determination of the eligibility of aeronautical parts and materials for installation on certificated aircraft.

20-63 Airborne Automatic Direction Finder Installations (Low and Medium Frequency) (7-7-69).

Sets forth one means, but not the only means, of demonstrating compliance with the airworthiness rules governing the functioning of airborne automatic direction finders. It does not pertain to installations previously approved.

20-64 Maintenance Inspection Notes for Lockheed L-188 Series Aircraft (8-1-69).

Describes maintenance inspection notes which can be used for the maintenance support of certain structural parts of Lockheed L-188 series aircraft.

20-64 CH 1 (10-26-73).

20-65 U.S. Airworthiness Certificates and Authorizations for Operation of Domestic and Foreign Aircraft (8-11-69).

Provides general information and guidance concerning issuance of airworthiness certificates for U.S. registered aircraft, and issuance of special flight authorizations for operation in the United States of foreign aircraft not having standard airworthiness certificates issued by the country of registry.

20-66 Vibration Evaluation of Aircraft Propellers (1-29-70).

Outlines acceptable means, but not the sole means, for showing compliance with the requirements of the FARs concerning propeller vibration.

20-67A Airborne VHF Communication System Installations (10-17-72).

Sets forth one means, but not the only means of demonstrating compliance with the airworthiness rules governing the functioning of airborne VHF communication systems.

20-68A Recommended Radiation Safety Precautions for Airborne Weather Radar (4-11-75).

Sets forth recommended radiation safety precautions for ground operation of airborne weather radar.

20-69 Conspicuity of Aircraft Instrument Malfunction Indicators (5-14-70).

Provides design guidance information on methods of improving conspicuity of malfunction indication devices.

20-71 Dual Locking Devices on Fasteners (12-8-70).

Provides guidance and acceptable means, not the sole means, by which compliance may be shown with the requirements for dual locking devices on removable fasteners installed in rotorcraft and transport category airplanes.

20-73 Aircraft Ice Protection (4-21-71).

Provides information relating to the substantiation of ice protection systems on aircraft.

20-74 Aircraft Position and Anticollision Light Measurements (7-29-71).

Contains useful information concerning measurements for intensity, covering, and color of aircraft position and anti-collision lights.

20-76 Maintenance Inspection Notes for Boeing B-707/720 Series Aircraft (10-21-71).

Provides maintenance inspection notes which can be used for the maintenance support program for certain structural parts of the B-707/720 series aircraft.

20-77 Use of Manufacturers' Maintenance Manuals (3-22-72).

Informs owners and operators about the usefulness of manufacturers' maintenance manuals for servicing, repairing, and maintaining aircraft, engines and propellers.

20-78 Maintenance Inspection Notes for McDonnell Douglas DC-8 Series Aircraft (7-11-72).

Provides maintenance inspection notes which can be used for the maintenance support program for certain structural parts of the DC-8 series aircraft.

20-81 Accidental or Unauthorized Activation of Emergency Locator Transmitters (ELT) (10-10-72).

Alerts the general aviation community to the harmful effects of accidental or unauthorized activation of emergency locator transmitters.

20-82 Maintenance Inspection Notes for Fairchild Hiller F-27/FH-227 Series Aircraft (12-5-72).

Provides maintenance inspection notes which can be used for the maintenance support program for certain structural parts of Fairchild Hiller F-27/FH-227 series aircraft.

20-82 CH 1 (7-12-73).

Provides additional material for subject advisory circular.

20-83 Maintenance Inspection Notes for Boeing B-737 Series Aircraft (1—17-73).

Provides maintenance inspection notes which can be used for the maintenance support program for certain structural parts of the B-737 series aircraft.

20-83 CH 1 (8-8-74).

Provides updating of material for the B-737 series aircraft maintenance inspection program. Inspection of selected areas of the wing, fuselage, empennage and landing gear of B-737 series aircraft are presented supplementing information currently in AC 20-83.

20-83 CH 2 (1-31-75).

20-84 Maintenance Inspection Notes for Boeing B-727 Series Aircraft (1-22-73).

Provides inspection notes which can be used for the maintenance support program for certain structural parts of the B-727 series aircraft.

20-84 CH 1 (8-8-74).

Updates material for the B-727 series aircraft maintenance inspection program. Inspection of selected areas of the wing, fuselage, empennage and landing gear of the B-727 series aircraft are presented supplementing information currently available in AC 20-84.

20-84 CH 2 (1-31-75).

20-85 Emergency Locator Transmitters and Receivers (3-16-73).

Provides information concerning the design, installation, and utilization of emergency locator transmitters.

20-86 Aviation Education through Building an Airplane (5-11-73).

Provides information to high schools about the available assistance, resources, methods, and opportunities for attaining basic educational goals by building an airplane.

20-87 Airborne Homing and Alerting Equipment for use with Emergency Locator Transmitters (5-7-73).

Sets forth the availability of recommended basic characteristics for airborne homing and alerting equipment for use with emergency locator transmitters (ELT).

20-88 Guidelines on the Marking of Power-Plant Instruments (12-11-73).

Provides guidelines on the marking of aircraft powerplant instruments.

20-89 Communication Interference Caused by Unintentional Radio Transmissions (3-22-74).

Alerts the aviation community to the potential hazards created by unintentional hazards created by unintentional radio transmissions from airborne, mobile, and ground based radio transmitters and gives guidance on alleviating ensuing hazards.

20-90B Address List for Engineering and Manufacturing District Offices (12-3-76).

Transmits the address list for all Engineering and Manufacturing District Offices.

20-91 Lithium Batteries Used in Emergency Locator Transmitters (4-11-75).

Warns of potential hazards associated with accidental release of sulfur-dioxide gas from lithium-sulfur batteries.

20-92 Anti-Icing Additives to Reduce Icing Problems in Aviation Gasoline (1-12-76).

Title is self explanatory.

20-93 Flutter Due to Ice or Foreign Substance on or in Aircraft Control Surfaces (1-29-76).

Provides information concerning the potential hazard associated with aircraft control surface flutter caused by imbalance.

20-94 Digital Clock Installation in Aircraft (3-4-76).

Provides guidelines for operating and installing digital clocks in aircraft.

20-95 Fatigue Evaluation of Rotorcraft Structure (5-18-76).

Sets forth acceptable means, not the only means, of compliance with the provisions of FAR sections 27.571 and 29.571 dealing with the fatigue evaluation of rotorcraft structure.

20-96 Surplus Military Aircraft—A Briefing for Prospective Buyers (12-2-76).

Provides many answers to questions regarding the purchasing of surplus military aircraft (type certification, is the aircraft flyable, is it for spare parts, scrap?).

20-97 High-Speed Tire Maintenance and Operational Practices (1-28-77).

Provides information on the causes of aircraft tire failures and methods of increasing tire reliability.

20-98 Auxiliary Two-Way Airborne Radio System Installations (5-23-77).

Provides guidance concerning installation and operation of two-way radio communication systems which are not used for controlling an aircraft in flight (i.e., mobile telephone, amateur radio, etc.).

20-99 Antiskid and Associated Systems (5-27-77).

Provides an acceptable means, but not the only means, of complying with the requirement that antiskid and associated systems must be designed so that no probable malfunction will result in a hazardous loss of braking or directional control of an airplane.

20-100 General Guidelines for Measuring Fire-Extinguishing Agent Concentrations in Powerplant Compartments (9-21-77).

Describes the installation and use of a model GA-2A fire extinguisher agent concentration recorder in determining the distribution and concentration of fire-extinguishing agents when discharged in an aircraft powerplant compartment.

20-101 Omega and Omega/VLF Navigation System Installation Approval in the Conterminous U.S. and Alaska (10-14-77).

Presents criteria and an acceptable means, but not the sole means, of compliance for the installation approval of Omega and Omega/VLF Navigation Airborne Equipment as a means of VFR/IFR RNAV en route navigation within the conterminous U.S. and Alaska.

20-102 Installation and Flight Testing of Equipment Installed in Aircraft (12-7-77).

Provides guidance information concerning installation and flight testing of equipment which, if not accomplished in accordance with applicable FAR's, could lead to serious accidents.

21-1B Production Certificates (5-10-76).

Provides information concerning Subpart G of Federal Aviation Regulations (FAR) Part 21, and sets forth acceptable means of compliance with its requirements.

21-2C Export Airworthiness Approval Procedures (5-7-76).

This advisory circular provides general information and guidance concerning issuance of export approvals under Federal Aviation Regulations (FAR) Part 21, Subpart L.

21-3 Basic Glider Criteria Handbook (1962).

Provides individual glider designers, the glider industry, and glider operating organizations with guidance material that augments the glider airworthiness certification requirements of the Federal Aviation Regulations. Reprinted 1973. ($2.05 Supt. Docs.) SN 050-011-00004-6.

21-4B Special Flight Permits for Operation of Overweight Aircraft (7-30-69).

Furnishes guidance concerning special flight permits necessary to operate an aircraft in excess of its usual maximum certificated takeoff weight.

21-5D Summary of Supplemental Type Certificates (Announcement of Availability) (4-7-76).

Announces the availability to the public of the new Summary of Supplemental Type Certificates (SSTC), dated January 1978. (See back of this checklist under "Internal Directives" for further information.)

21-6 Production Under Type Certificate Only (5-26-67).

Provides information concerning Subpart F of FAR Part 21, and sets forth examples, when necessary, of acceptable means of compliance with its requirements.

21-7A Certification and Approval of Import Products (11-24-69).

Provides guidance and information relative to U.S. certification and approval of import aircraft, aircraft engines and propellers that are manufactured in a foreign country with which the United States has an agreement for the acceptance of those products for export and import.

21-8 Aircraft Airworthiness; Restricted Category: Certification of Aircraft With Uncertificated or Altered Engines or Propellers (5-21-69).

Sets forth acceptable means of substantiating that uncertificated or altered engines and propellers have no unsafe features for type certification of aircraft in the restricted category.

21-9 Manufacturers Reporting Failures, Malfunctions, or Defects (12-30-70).

Provides information to assist manufacturers of aeronautical products (aircraft, aircraft engines, propellers, appliances, and parts) in notifying the Federal Aviation Administration of certain failures, malfunctions, or defects, resulting from design or quality control problems, in the products which they manufacture.

21-10 Flight Recorder Underwater Locating Device (5-20-71).

Provides one acceptable means (not the only means) of showing compliance with the underwater locating device requirements of FAR 25.1459 and FAR 121.343.

21-11 Quality Assurance Systems Analysis Review (QASAR) Program Manufacturers/Suppliers (5-26-72).

Explains the objectives and concept of the FAA's subject program.

21-12 Application for U.S. Airworthiness Certificate, FAA Form 8130-6 (OMB 04-R0058) (1-17-73).

Provides instructions on the preparation and submittal of subject form.

21-13 Standard Airworthiness Certification of Surplus Military Aircraft and Aircraft Built from Spare and Surplus Parts (4-5-73).

Provides guidance and instructions on establishing eligibility and submitting application for civil airworthiness certification of surplus military aircraft and aircraft assembled from spare and surplus parts, under FAR 21.183(d) when an FAA Type Certificate has been issued under FAR 21.21 or FAR 21.27.

21-14 The Role of Simulation in the Aircraft Certification Process (6-12-75).

Informs the aviation industry that the FAA intends to conduct an exploratory program to determine the degree to which simulation can support the aircraft certification process.

21-15 New Issuance System for "Aircraft Type Certificate Data Sheets and Specifications" and "Aircraft Engine and Propeller Type Certificate Data Sheets and Specifications" (4-5-77).

Provides information concerning a change in the issuance system for the subject Type Certificates and Data Sheets.

21.303-1A Certification Procedures for Products and Parts (8-10-72).

Provides information concerning section 21.303 of Federal Aviation Regulations, Part 21, and to set forth examples, as necessary, of acceptable means of compliance with its requirements.

21.303-2A Availability of Listing "Parts Manufacturer Approvals"—1977 (10-1-77).

Announces the availability of the parts listing from the Superintendent of Documents at a price of $8.50. Stock No. 050-007-00401-0.

25-2 Extrapolation of Takeoff and Landing Distance Data Over a Range of Altitude for Turbine-Powered Transport Aircraft (7-9-64).

Sets forth acceptable means by which compliance may be shown with the requirements in CAR 4b and SR-422B.

25-4 Inertial Navigation Systems (INS) (2-18-66).

Sets forth an acceptable means for complying with rules governing the installation of inertial navigation systems in transport category aircraft.

25-5 Installation Approval on Transport Category Airplanes of Cargo Unit Load Devices Approved as Meeting the Criteria in NAS 3610 (6-3-70).

Sets forth an acceptable means, but not the sole means, of complying with the requirements of the Federal Aviation Regulations (FAR's) applicable to the installation on transport category airplanes of cargo until load devices approved as meeting the criteria in NAS 3610.

25-6 Ground Proximity Warning Systems (GPWS) (12-31-74).

Outlines acceptable ground proximity warning system performance. System performance, other than that described, may also be acceptable when adequately substantiated.

25.253-1A High-Speed Characteristics (12-27-76).

Sets forth an acceptable means, but not the only means, by which compliance may be shown with FAR 25.253 during certification flight tests.

25.981-1A Guidelines for Substantiating Compliance With the Fuel Tank Temperature Requirements (1-20-71).

Sets forth some general guidelines for substantiating compliance with fuel tank temperature airworthiness standards section 25.981.

25.1329-1A Automatic Pilot Systems Approval (7-8-68).

Sets forth an acceptable means by which compliance with the automatic pilot installation requirements of FAR 25.1329 may be shown.

25.1457-1A Cockpit Voice Recorder Installations (11-3-69).

Sets forth one acceptable means of compliance with provisions of FAR 25.1457 (b), (e), and (f) pertaining to area microphones, cockpit voice recorder location, and erasure features.

29-1 Approval Basis for Automatic Stabilization Equipment (ASE) Installations in Rotorcraft (12-26-63).

Gives means for compliance with flight requirements in various CAR's.

29-1 CH 1 (3-26-64).

Transmits revised information about the time delay of automatic stabilization equipment.

29.773-1 Pilot Compartment View (1-19-66).

Sets forth acceptable means, not the sole means, by which compliance with FAR 29.773(a)(1), may be shown.

33-1B Turbine-Engine Foreign Object Ingestion and Rotor Blade Containment Type Certification Procedures (4-22-70).

Provides guidance and acceptable means, not the sole means, by which compliance may be shown with the design and construction requirements, of Part 33 of the Federal Aviation Regulations.

33-2A Aircraft Engine Type Certification Handbook (6-5-72).

Contains guidance relating to type certification of aircraft engines which will constitute acceptable means, although not the sole means, of compliance with the Federal Aviation Regulations.

33-3 Turbine and Compressor Rotors Type Certification Substantiation Procedures (9-9-68).

Sets forth guidance and acceptable means, not the sole means, by which compliance may be shown with the turbine and compressor rotor substantiation requirements in FAR Part 33.

36-1B Certificated Airplane Noise Levels (12-5-77).

Provides noise level data for airplanes certificated under FAR Part 36 since its publication on Nov. 18, 1969.

36-2A Measured or Estimated (Uncertificated) Airplane Noise Levels (2-6-78).

Provides estimates of noise levels or measured noise levels from airplanes not certificated to FAR Part 36.

37-2A Test Procedures for Maximum Allowable Airspeed Indicators (10-22-74).

Provides guidance concerning test procedures which may be used in showing compliance with the standards in FAR 37.145 (TSO-C46a).

37-3A Radio Technical Commission for Aeronautics Document DO-160 (3-20-75).

This circular announces RTCA Document DO-160 and discusses how it may be used in connection with technical standard order authorizations.

39-1A Jig Fixtures; Replacement of Wing Attach Angles and Doublers on Douglas Model DC-3 Series Aircraft Airworthiness Directive 66-18-2 (3-5-70).

Describes methods of determining that jig fixtures used in the replacement of the subject attached angles and doublers meet the requirements of Airworthiness Directive 66-18-2.

39-6E Summary of Airworthiness Directives (2-11-76).

Announces the availability of Summary of Airworthiness Directives dated January 1, 1976 from the FAA in Oklahoma City and how to obtain them.

43-2A Minimum Barometry for Calibration and Test of Atmospheric Pressure Instruments (8-22-74).

Sets forth guidance material which may be used to determine the adequacy of barometers used in the calibration of aircraft static instruments and presents information concerning the general operation, calibration, and maintenance of such barometers.

43-3 Nondestructive Testing in Aircraft (5-11-73).

Reviews the basic principles underlying nondestructive testing. ($0.75 Supt. Docs.) SN 5007-00208.

43-4 Corrosion Control for Aircraft (5-15-73).

Summarizes current available data regarding identification and treatment of corrosive attack on aircraft structure and engine materials.

43-4 CH 1 (3-1-74).

Provides additional information on identification and treatment of corrosion attack on aircraft structures. Adds a new Chapter 14—Corrosion control of aircraft used in agricultural cropdusting operations.

43-4 CH 2 (10-8-74).

Clarifies the discussion on the removal of corrosion and treatment of corroded areas.

43-5 Airworthiness Directives for General Aviation Aircraft (8-13-74).

Points areas of misunderstanding regarding: (1) Aircraft owners and operators' responsibility for complying with AD's; (2) maintenance personnel responsibilities with regards to performance of AD's, and (3) maintenance records entries for AD's required by FAR 91.173(a)(2)(v) and FAR 43.9.

43-6A Automatic Pressure Altitude Encoding Systems and Transponders Maintenance and Inspection Practices (11-11-77).

Provides information on the installation encoding altimeters based upon recently acquired operating experience and on the maintenance of ATC transponders.

43-7 Ultrasonic Testing for Aircraft (9-24-74).

Describes methods used in ultrasonic nondestructive testing, discusses the many advantages, and points out the simplicity of the tests. Contains many illustrations. ($1 Supt. Docs.) SN 050-007-00282-3.

43-9A Maintenance Records: General Aviation Aircraft (9-9-77).

Provides information to assist maintenance personnel in fulfilling their responsibility under FAR Section 43.9.

43-10 Mechanical Work Performed on U.S. and Canadian Registered Aircraft (1-26-76).

Provides information and guidance to aircraft owners/operators and maintenance personnel concerning mechanical work performed on U.S. registered aircraft by Canadian maintenance personnel and on Canadian registered aircraft by U.S. maintenance personnel.

43-11 Reciprocating Engine Overhaul Terminology and Standards (4-7-76).

Discusses engine overhaul terminology and standards that are used by the aviation industry.

43-12 Preventive Maintenance (7-16-76).

Provides information concerning preventive maintenance and who may perform it.

43-14 Maintenance of Weather Radar Radomes (2-24-77).

Provides guidance material useful to repair facilities in the maintenance of weather radomes.

43-15 Recommended Guidelines for Instrument Shops (8-15-77).

Provides guidelines concerning environmental conditions for instrument repair and overhaul shops and information on calibration of test equipment.

43.9-1C Instruction for Completion of FAA Form 337 (12-20-73).

Provides instructions for completing revised FAA Form 337, Major Repair and Alteration (Airframe, Powerplant, Propeller, or Appliance).

43.13-1A Acceptable Methods, Techniques and Practices—Aircraft Inspection and Repair (4-17-72).

Contains methods, techniques, and practices acceptable to the Adminis-

trator for inspection and repair to civil aircraft. Published in 1973. ($3.70—Supt. Docs.) SN 050-011-00058-5.

43.13-1A CHG 1 (5-12-75).

Transmits new and revised material for basic advisory circular. ($0.65—Supt. Docs.) SN 050-007-00294-7.

43.13-1A Ch 2 (12-22-76).

Transmits revised material concerning aircraft instrument adjustments. ($0.35 Supt. Docs.) SN 050-007-00368-4.

43.13-2A Acceptable Methods, Techniques, and Practices—Aircraft Alterations (6-9-77).

Contains methods, techniques, and practices acceptable to the Administrator for use in in altering civil aircraft. ($2.75 Supt. Docs.) SN 050-007-00407-9.

43-203A Altimeter and Static System Tests and Inspections (6-6-67).

Specifies acceptable methods for testing altimeter and static system. Also, provides general information on test equipment used and precautions to be taken.

45-2 Identification and Registration Marking (7-7-72).

Provides guidance and information concerning the identification and marking requirements of Federal Aviation Regulations (FAR) Parts 21 and 45, and where considered helpful, to provide an acceptable means, but not the sole means, of compliance with the regulations.

47-1A Aircraft Registration, Eligibility, Identification and Activity Report (6-7-73).

Advises owners and operators of U.S. civil aircraft of requirement for annual submission of current information related to aircraft registration eligibility, requests similar submission of information related to identification and activity of aircraft; and to call attention to the availability of the reporting form to be used.

Airmen

SUBJECT No. 60

60-2M Annual Aviation Mechanic Safety Awards Program (2-6-75).

Provides the details of the annual Aviation Mechanic Safety Awards Program.

60-4 Pilot's Spatial Disorientation (2-9-65).

Acquaints pilots flying under visual flight rules with the hazards of disorientation caused by the loss of reference with the natural horizon.

60-6A Airplane Flight Manuals (AFM), Approved Manual Materials, Markings, and Placards—Airplanes (2-9-76).

Alerts pilots to the regulatory requirements relating to the subject and provides information to aid pilots to comply with these requirements.

60-9 Induction Icing—Pilot Precautions and Procedures (2-28-73).

Provides the pilot with information on the causes and results of induction icing in reciprocating aircraft engines, and the precautions he should take to reduce the likelihood of icing, and the means available to him in controlling icing when it is encountered.

60-10 Recommended Safety Parameters for Operation of Hang Gliders (5-16-74).

Suggests safety parameters for the operation of "hang gliders" and to present the current FAA intent with respect to the regulation and operation of those vehicles.

60-11 Aides Authorized for Use by Airman Written Test Applicants (8-27-74).

Clarifies FAA policy concerning aids that applicants may use when taking airman written tests.

60-12 Availability of Industry-Developed Guidelines for the Conduct of the Biennial Flight Review (2-11-76).

Informs all FAA certificated flight instructors of the availability of, and how to obtain, the industry-developed guidelines for the conduct of the Biennial Flight Review.

60-13 The Accident Prevention Counselor Program (4-27-76).

Provides information to acquaint the general aviation community with the accident prevention counselor program and outlines the ways the accident prevention counselor force enhances aviation safety.

60-14 Aviation Instructor's Handbook (7-7-76).

Provides the aviation instructor with comprehensive, accurate, and easily understood information on learning and teaching and to relate this information to students. Cancels AC 61-16A. ($2.75 Supt. Docs.) SN 050-011-00072-1.

61-8D Instrument Rating Written Test Guide (6-9-77).

Prepared by the FAA as an aid to pilots who are preparing for the Instrument Rating (Airplane, Helicopter, or Foreign Pilot) Written Tests. Its purpose is to define the scope of the written test and directs applicants to appropriate study material. Contains representative test questions. ($3.75 Supt. Docs.) SN 050-007-00410-9.

61-9B Pilot Transition Courses for Complex Single-Engine and Light, Twin-Engine Airplanes (1-15-74).

A guide to the procedures and standards to be followed for a thorough and comprehensive checkout in modern single- and twin-engine aircraft. ($0.45 Supt. Docs.) SN 050-007-00226-2.

61-10A Private and Commerical Pilots Refresher Courses (9-27-72).

Provides a syllabus of study requirements and describes the areas of training that should be emphasized. ($0.55 Supt. Docs.) SN 050-011-00060-5.

61-12H Student Pilot Guide (2-14-77).

Provides guidance for student pilots and those already in primary flight training. Updated to include requirements covered in Part 61. ($1.50 Supt. Docs.) SN 050-007-00377-3.

61-13A Basic Helicopter Handbook (4-5-73).

Provides detailed information to applicants preparing for private, commerical, and flight instructor pilot certificates with a helicopter rating about helicopter aerodynamics, performance, and flight maneuvers. It will also be useful to certificated helicopter flight instructors as an aid in training students. ($2.50 Supt. Docs.) SN 050-011-00064-8.

61-18E Airline Transport Pilot—Airplane—Written Test Guide (5-6-77).

Prepared to assist applicants who are preparing for the Airline Transport Pilot (Airplane) Written Test. Describes the basic aeronautical knowledge and associated requirements for certification. Contains instructions for taking the written test and representative test questions. ($3.25 Supt. Docs.) SN 050-007-00416-8.

61-19 Safety Hazard Associated With Simulated Instrument Flights (12-4-64).

Emphasizes the need for care in the use of any device restricting visibility while conducting simulated instrument flights that may also restrict the view of the safety pilot.

61-21 Flight Training Handbook (1-11-66).

Provide information and direction in the introduction and performance of training maneuvers for student pilots, pilots requalifying or preparing for additional ratings, and flight instructors. Reprinted in 1969. ($2.15 Supt. Docs.) SN 050-007-00008-1.

61-23A Pilot's Handbook of Aeronautical Knowledgeable (7-10-70).

Contains essential, authoritative information used in training and guiding applicants for private pilot certification, flight instructors, and flying

school staffs. ($5.30 Supt. Docs.) SN 050-011-00051-8.

61-27B Instrument Flying Handbook (9-22-70).

Provides the pilot with basic information needed to acquire an FAA instrument rating. It is designed for the reader who holds at least a private pilot certificate and is knowledgeable in all areas covered in the "Pilot's Handbook of Aeronautical Knowledge." ($3.35 Supt. Docs.) SN 050-007-00067-7.

61-31B Gyroplane Pilot Written Test Guide, Private and Commerical (4-14-76).

Provides guidance and assistance to applicants who are preparing for the Private or Commerical Pilot Certificate with a Rotorcraft-Gyroplane Rating under the provisions of FAR Part 61.

61-31B Chg 1 (5-13-77).

61-32B Private Pilot—Airplane—Written Test Guide (5-2-77).

Provides information, guidelines, and sample test items to assist applicants for the Private Pilot Certificate in attaining necessary aeronautical knowledge. ($2.30 Supt. Docs.) SN 050-011-00073-9.

61-34B Federal Aviation Regulations Written Test Guide for Private, Commercial and Military Pilots (2-10-75).

Outlines the scope of the basic knowledge required of civilian or military pilots who are studying FARs as they pertain to the Regulations terminology; to the certification of private and commercial pilots; to the operation of aircraft in the national airspace; and to the requirements of the National Transportation Safety Board. For use as a guide in preparing for the FAR Written Test. ($0.70 Supt. Docs.) SN 050-007-00288-2.

61-42A Airline Transport Pilot (Helicopter) Written Test Guide (1-20-72).

Describes the type and scope of required aeronautical knowledge covered in the written tests, lists reference materials available from GPO bookstores, and presents sample test items with answers and explanations. ($0.70 Supt. Docs.) SN 050-011-00057-7.

61-47 Use of Approach Slope Indicators for Pilot Training (9-16-70).

Informs pilot schools, flight instructors and student pilots of the recommendation of the Federal Aviation Administration on the use of approach slope indicator systems for pilot training.

61-51 Reporting Flight Time on Pilot Applications, FAA Form 8420-3 (6-26-72).

Advises applicants of the importance of entering their pilot flight time on subject form. (OBM No. 04-R0064).

61-52B Flight Instructor of the Year Award Program (1-5-74).

Provides the details of the Flight Instructor of the Year Award Program.

61-54A Private Pilot Airplane . . . Flight Test Guide (4-18-75).

Contains information and guidance concerning the pilot operations, procedures, and maneuvers relevant to the airplane category with a single-engine land/sea or multiengine land/sea rating. ($1.35 Supt. Docs.) SN 050-007-00300-5.

61-55A Commercial Pilot Airplane . . . Flight Test Guide (4-25-75).

Assists the applicant and the instructor in preparing for the flight test for certification as a commercial pilot with single engine land or sea rating and for multiengine land or sea ratings. ($1.75 Supt. Docs.) SN 050-007-00295-5.

61-56A Flight Test Guide, Instrument Pilot Airplane (5-7-76).

Assists the applicant and the instructor in preparing for the flight test for the Instrument Pilot Airplane Rating. ($0.55 Supt. Docs.) SN 050-007-00343-9.

61-57A Type Rating, Airplane, Flight Test Guide (5-1-75).

Contains information and guidance concerning the pilot operations, procedures, and maneuvers relevant to the flight test required for an Airplane Type Rating. ($0.70 Supt. Docs.) SN 050-007-00299-8.

61-58 Flight Instructor Practical Test Guide (5-1-73).

Outlines new requirements based on changes to FAR Part 61, Certification of Pilots and Flight Instructors. ($0.50 Supt. Docs.) SN 050-011-00067-4.

61-59A Private and Commercial Pilot—Helicopter—Flight Test Guide (3-3-77).

Assists applicants for the Private or Commercial Pilot Rotorcraft Certificate with Helicopter Rating in preparing for their certification flight test. ($1.60 Supt. Docs.) SN 050-007-00384-6.

61-60 Private and Commercial Pilot Gyroplane, Flight Test Guide (May 1973).

Outlines appropriate pilot operations and the minimum standards for the performance of each procedure or maneuver which will be accepted by the examiner as evidence of the pilot's competency, under Part 61 (revised). ($0.65 Supt. Docs.) SN 050-011-00066-6.

61-61A Private and Commercial Pilot—Glider—Flight Test Guide (12-3-76).

Prepared to assist the applicant and the instructor in preparing for the flight test for the Private and the Commercial Pilot certificate with Glider Rating. Contains information concerning pilot operations, procedures and maneuvers relevant to the flight test. ($1.50 Supt. Docs.) SN 050-011-00071-2.

61-62A Private and Commercial Pilot—Free Balloon—Flight Test Guide (12-17-76).

Prepared to assist the applicant in preparing for the flight test for the Private or Commercial Pilot Certificate with a lighter-than-air category and free balloon class. Contains information concerning the operations, procedures, and maneuvers relevant to the flight test. ($1.10 Supt. Docs.) SN 050-007-00375-7.

61-63 Flight Test Guide, Private and Commercial Pilot—Lighter-Than-Air Airship (5-23-74).

Establishes a new concept of pilot training and certification requirements. To provide a transition to these revised requirements, Part 61 (revised) permits the applicant, for a period of 1 year after the effective date, to meet either the previous requirements for the Private Pilot Certificate as outlined in Part 61, prior to November 1, 1973.

61-64A Flight Test Guide—Instrument Pilot Helicopter (5-25-77)

Assists the applicant and the instructor in preparing for the flight test for the Instrument Pilot Helicopter Rating. Contains information and guidance concerning the pilot operations, procedures, and maneuvers relevant to the flight test. ($1.30 Supt. Docs.) SN 050-007-00404-4.

61-65 Part 61 (Revised) Certification: Pilot and Flight Instructors (9-5-73).

Informs pilots and flight instructors of the changes in Part 61, revised January 23, 1973, their effects, and the standards and procedures which will be used in implementing them.

61-66 Annual Pilot in Command Proficiency Checks (11-2-73).

Presents material relating to annual proficiency checks required for pilots-in-command of civil aircraft type certificated for more than one required pilot crewmember, other than those operating under Parts 121, 123, 127, 133, 135, and 137.

61-67 Hazards Associated with Spins in Airplanes Prohibited from Intentional Spinning (2-1-74).

Informs pilots of the airworthiness standards for the type certification of

small airplanes prescribed in Section 23.221 of the Federal Aviation Regulations concerning spin maneuvers.

61-68 Flight Instructor Refresher Clinics—Scheduling, Attendance, Facilities, and Equipment (2-27-74).

Provides guidance to sponsors regarding scheduling, required facilities and equipment, and attendance control at Flight Instructor Refresher Clinics in which the Flight Instructor Refresher Unit (FIRU) participates.

61-70 Flight Instructor Instrument—Airplane—Written Test Guide (3-29-74).

Provides guidance for the applicant by outlining the scope of knowledge required for the Flight Instructor Certificate with an Instrument Airplane Rating. ($1.65 Supt. Docs.) SN 050-007-00252-1.

61-71A Commercial Pilot Airplane Written Test Guide (3-24-77).

Outlines the aeronautical knowledge requirements for a commercial pilot rating, outlines source material for study, and includes representative test items and illustrations used in the FAA written test. ($2.30 Supt. Docs.) SN 050-007-00385-4.

61-72A Flight Instructor—Airplane—Written Test Guide (3-24-77).

Outlines the aeronautical knowledge requirements for certification as an airplane flight instructor, outlines source material for study, and provides representative test questions for the FAA written test. ($2.70 Supt. Docs.) SN 050-007-00386-2.

61-73 Private and Commercial Pilot Rotorcraft—Helicopter Written Test Guide (8-8-74).

Assists applicants who are preparing for the Private or Commercial Pilot certificate with a Rotorcraft—Helicopter rating under the provisions of FAR Part 61 (revised). ($1.20 Supt. Docs.) SN 050-007-00265-3.

61-74A Flight Instructor Rotorcraft—Helicopter Written Test Guide (5-27-77).

Assists applicants who are preparing for the Flight Instructor Certificate with a Rotorcraft—Helicopter Rating. ($2.30 Supt. Docs.) SN 050-007-00400-1.

61-75 Flight Instructor—Glider—Written Test Guide (9-18-74).

Assists applicants who are preparing for the Flight Instructor—Glider Written Test. ($1.50 Supt. Docs.) SN 050-007-00271-8.

61-77 Airline Transport Pilot Airplane Practical Test Guide (Part 61 Revised) (4-23-74).

Designed to assist the applicant and his instructor in preparing for the Airline Transport Pilot Certificate with an Airplane Rating under FAR Part 61 (revised). ($0.50 Supt. Docs.) SN 050-007-00257-2.

61-81 Private and Commercial Pilot—Glider—Written Test Guide (4-27-76).

Contains a comprehensive study outline and a list of recommended study materials. Sample study questions and illustrations pertinent to the subject of glider flying are included ($1.60 Supt. Docs.) SN 050-007-00339-1.

61-82 Airline Transport Pilot—Helicopter—Flight Test Guide (8-25-76).

Describes procedures and maneuvers relevant to the ATP Certificate—Helicopter—that is limited to VFR and that which is not limited to VFR. Includes a suggested flight test checklist. ($0.80 Supt. Docs.) SN 050-007-00358-7.

61-83 Nationally Scheduled Federal Aviation Administration (FAA)-Approved, Industry-Conducted Flight Instructor Refresher Clinics (9-3-76).

Announces a concept pertaining to FAA-approved, industry-conducted Flight Instructor Refresher Clinics, outlines procedures for approval and invites participation by interested industry groups.

61-84 Role of Preflight Preparation (4-11-77).

Provides guidance information on some elements of flight planning that should be considered in planning and conducting a safe, efficient flight.

61-85 Flight Instructor Instrument—Rotorcraft-Helicopter—Written Test Guide (7-5-77).

Prepared to assist applicants in preparing for the Flight Instructor-Instrument Rotorcraft/Helicopter Rating. Contains recommended study materials, certification requirements, and sample questions. ($2.40 Supt. Docs.) SN 050-007-00403-6.

61-86 Pilot Type Rating Certificate Information (6-30-77).

Provides pilot certificate designations adopted by the FAA for aircraft type ratings issued with pilot certificates.

63-1B Flight Engineer Written Test Guide (10-22-70).

Provides information to prospective flight engineers and others interested in this certification area. Contains information about certification requirements and describes the type and scope of the written test. Lists appropriate study and reference material and presents sample questions similar to those found in the official written tests. ($0.85 Supt. Docs.) SN 050-007-00164-9.

63-2A Flight Navigator Written Test Guide (4-4-69).

Defines the scope and narrows the field of study to the basic knowledge required for the Flight Navigator Certificate. Published in 1969. ($0.70 Supt. Docs.) SN 050-007-0064-2.

65-2D Airframe and Powerplant Mechanics Certification Guide (1-30-76).

Provides information to prospective airframe and powerplant mechanics and other persons interested in FAA certification of aviation mechanics. ($1.30 Supt. Docs.) SN 050-007-00331-5.

65-4B Aircraft Dispatcher Written Test Guide (7-25-72).

Describes the type and scope of aeronautical knowledge covered by the aircraft dispatcher written examination, lists reference materials, and presents sample questions. ($1.40 Supt. Docs.) SN 050-007-00190-8.

65-5A Parachute Rigger—Senior/Master—Certification Guide (12-20-74).

Provides information on how to apply for a parachute rigger certificate or rating and assists the applicant in preparing for the written, oral, and practical tests. ($0.75 Supt. Docs.) SN 050-007-00287-4.

65-9A Airframe and Powerplant Mechanics—General Handbook (4-12-76).

Designed as a study manual for persons preparing for a mechanic certificate with airframe or powerplant ratings. Emphasis in this volume is on theory and methods of application, and is intended to provide basic information on principles, fundamentals, and airframe and powerplant ratings. ($6.75 Supt. Docs.) SN 050-007-00379-0.

65-11A Airframe and Powerplant Mechanics Certification Information (4-21-71).

Provides answers to questions most frequently asked about Federal Aviation Administration certification of aviation mechanics. ($0.40 Supt. Docs.) SN 050-007-00171-1.

65-12A Airframe and Powerplant Mechanics Powerplant Handbook (4-12-76).

Designed to familiarize student mechanics with the construction, theory of operation, and maintenance of aircraft powerplants. ($6.50 Supt. Docs.) SN 050-007-00373-1.

65-13C FAA Inspection Authorization Directory (10-19-77).

Provides a new directory of all FAA certificated mechanics who hold an inspection authorization as of Aug. 31, 1977.

65-15A Airframe and Powerplant Mechanics Airframe Handbook (4-12-76).

Designed to familiarize student mechanics with airframe construction, repair, and the operating theory of airframe systems. ($6.00 Supt. Docs.) SN 050-007-00391-9.

65-18 Report Availability of a Survey of the Aviation Mechanics Occupation (9-4-74).

Announces the public availability of the 1974 report on a Survey of the Aviation Mechanics Occupation.

65-19A Inspection Authorization Study Guide (11-17-76).

Provides guidance for persons who conduct annual and progressive inspections and approve major repairs and/or alternations of aircraft. It stresses the importance that certificated mechanics, holding IA's, have in air safety. Primarily intended for mechanics who hold or are preparing to take the test for an inspection authorization. ($0.65 Supt. Docs.) SN 050-007-00332-3.

67-1 Medical Information for Air Ambulance Operators (3-4-74).

Provides persons or groups interested or involved in civil air ambulance activities with information governing the transport of patients by air.

67-2 Medical Handbook for Pilots (5-15-74).

An aviation medicine handbook written in pilots language that provides guidance on when, and when not, to fly. Emphasizes the fact that, to be a good pilot, you must be physically fit, psychologically sound, and well trained. Designed to complement the Pilots Handbook of Aeronautical Knowledge. ($1.45 Supt. Docs.) SN 050-007-00254-8.

Airspace

SUBJECT NO. 70

70-2B Airspace Utilization Considerations in the Proposed Construction, Alteration, Activation and Deactivation of Airports (9-23-77).

Advises those persons proposing to construct, alter, activate or deactivate a civil or joint-use (civil/military) airport, for which Federal aid has not been requested of the Federal Aviation Administration.

70/7460-1E Obstruction Marking and Lighting (11-1-76).

Describes FAA standards on obstruction marking and lighting and establishes the methods, procedures, and equipment types for both aviation red and high-intensity white obstruction lights.

70/7460-2G Proposed Construction or Alteration of Objects that may Affect the Navigable Airspace (11-30-77).

Advises those persons proposing to erect or alter an object that may affect the navigable airspace of the requirement to submit a notice to the Administrator of the Federal Aviation Administration (FAA). Contains addresses of the FAA regional offices and availability of associated publications.

70/7460-3 Petitioning the Administrator for Discretionary Review; Section 77.37, FAR (8-8-68).

Revises and updates information concerning the submission of petitions to the Administrator for review, extension, or revision of determinations issued by regional directors or their designees.

73-1 Establishment of Alert Areas (3-11-68).

Announces the establishment of alert areas and sets forth the procedures which FAA will follow in establishing such areas.

Air Traffic Control and General Operations

SUBJECT NO. 90

90-1A Civil Use of U.S. Government Produced Instrument Approach Charts (4-10-68).

Clarifies landing minimums requirements and revises instrument approach charts.

90-5 Coordination of Air Traffic Control Procedures and Criteria (6-13-63).

States Air Traffic Service policy respecting coordination of air traffic procedures and criteria with outside agencies and/or organizations.

90-14A Altitude—Temperature Effect on Aircraft Performance (1-26-68).

Introduces the Denalt Performance Computer and reemphasizes the hazardous effects density altitude can have on aircraft.

90-23D Wake Turbulence (12-15-72).

Alerts pilots to the hazards of aircraft trailing vortex wake turbulence and recommends related operational procedures.

90-34 Accidents Resulting from Wheelbarrowing in Tricycle Gear Equipped Aircraft (2-27-68).

Explains "wheelbarrowing", the circumstances under which it is likely to occur, and recommended corrective action.

90-42A Traffic Advisory Practices at Nontower Airports (8-16-72).

Establishes, as good operating practices, procedures for pilots to be apprised of or exchange traffic information, when approaching or departing uncontrolled airports.

90-43D Operations Reservations for High-Density Traffic Airports (7-20-77).

Advises the aviation community of the means for all aircraft operators, except helicopters, scheduled and supplemental air carriers and scheduled air taxis, to obtain a reservation to operate to and/or from designated high-density traffic airports.

90-45A Approval of Area Navigation Systems for Use in the U.S. National Airspace System (2-21-75).

Provides guidelines for implementation of two-dimensional area navigation (2D RNAV) within the U.S. National Airspace System (NAS). Provides for both VOR/DME dependent systems and self-contained systems such as Inertial Navigation Systems (INS).

90-45A Ch 1 (9-15-75).

90-45A Ch 2 (7-22-76).

90-48 Pilots' Role in Collision Avoidance (3-20-70).

Alerts all pilots to the midair collision and near midair collision hazard and to emphasize those basic problem areas of concern, as related to the human casual factors, where improvements in pilot education, operating practices, procedures, and techniques are needed to reduce midair conflicts.

90-50B VHF Radio Frequency Assignment Plan for Aeronautical Operations (12-12-77).

Describes the civil air traffic control assignment of frequencies in the very high frequency (118-136 MHz) band.

90-58C VOR Course Errors Resulting from 50 kHz Channel Mis-Selection (4-7-75).

Provides information concerning a potentially hazardous situation when a 200 channel VOR receiver is inadvertently mistuned by 50 kHz from the frequency of a 100 kHz ground station.

90-60 Weather Observation Reporting Obscured or Partially Obscured Sky Condition (3-31-72).

Provides pilots with information concerning weather conditions reported by weather observers as obscuration or partial obscuration.

90-62 Flying DME Arcs (1-23-73).

Describes the procedures and techniques for intercepting DME arcs from radials, maintaining DME arcs, and intercepting radials and localizers from DME arcs.

90-64 Automated Radar Terminal System (ARTS) III (6-22-73).

Advises the aviation community of the capabilities of the Automated

Radar Terminal System and the associated services provided by ARTS III equipped air traffic control facilities.

90-65 Air Traffic Fuel Economy Program (1-18-74).

Advises the aviation community of flow control procedures that will be utilized to conserve aviation fuel during periods when the normal movement of aircraft is disrupted. Also describes actions required of user groups to ensure efficient flow control planning.

90-66 Recommended Standard Traffic Patterns for Airplane Operations at Uncontrolled Airports (2-27-75).

Calls attention to regulatory requirements for the operations of airplanes at uncontrolled airports. Recommends voluntary use of standard traffic pattern flight procedures.

90-67 Light Signals from the Control Tower for Ground Vehicles, Equipment, and Personnel (8-15-75).

Provides the aviation community with the meaning of the light signals used when communicating with ground vehicles, equipment, and personnel on the airport movement area from the control tower.

90-70 Straight-In Nonprecision Instrument Approach Procedures Visual Descent Point (VDP) (7-7-76).

Describes the concept, purpose, and use of a designated and published VDP to be provided on some straight-in nonprecision instrument approach procedures.

90-72A Minimum Safe Altitude Warning (MSAW) (1-31-78).

Describes the capabilities and limitations of the MSAW function implemented at terminal facilities equipped with ARTS III.

90-73 Local Flow Traffic Management (1-13-77).

Describes new arrival procedures for ATC handling of high-performance aircraft.

90-74 Announcing the Availability of United States Terminal Instrument Procedures (TERPS) (2-4-77).

Announces the availability to the public of the Third Edition of the U.S. Standard for Terminal Instrument Procedures which is available from the Supt. of Docs. for $2.80. SN 050-007-00345-5.

90-75 Strobe Light System Inspection Practices (2-10-77).

Advises the general aviation community of the importance of proper maintenance of capacitive discharge strobe light systems which are installed within or near fuel systems.

90-76 Flight Operations in Oceanic Airspace (4-15-77).

Describes the basic requirements, limitations, and considerations applicable to flight proposed into oceanic airspace under U.S. ATC jurisdiction.

91-5B Waivers of Subpart B, Part 91 of the Federal Aviation Regulations (FARs) (1-28-72).

Provides information concerning the submission of applications for and the issuance of waivers of Subpart B, FAR Part 91.

91-6 Water, Slush, and Snow on the Runway (1-21-65).

Provides background and guidelines concerning the operation of turbojet aircraft with water, slush, and/or snow on the runway.

91-8A Use of Oxygen by General Aviation Pilots/Passengers (8-11-70).

Provides general aviation personnel with information concerning the use of oxygen.

91-9 Potential Hazards Associated With Turbojet Ground Operations (6-19-65).

Alerts turbojet operators and flight crews to potential hazards involving turbojet operations at airports.

91-11A Annual Inspection Reminder (12-3-69).

Provides the aviation community with a uniform visual reminder of the date an annual inspection becomes due. (Reference section 91.169(a)(1) of the FAR's.)

91.11-1 Guide to Drug Hazards in Aviation Medicine (7-19-63).

Lists all commonly used drugs by pharmacological effect on airmen with side effects and recommendations. Reprinted 1970. ($1.15 Supt. Docs.) SN 050-009-00001-7.

91-13B Cold weather Operation of Aircraft (1-17-78).

Provides background and guidelines relating to operation of aircraft in the colder climates where wide temperature changes may occur.

91-14B Altimeter Setting Sources (10-1-71).

Provides the aviation public, industry, and FAA field personnel with guidelines for setting up reliable altimeter setting sources.

91-15 Terrain Flying (2-2-67).

A pocket-size booklet designed as a tool for the average private pilot. Contains a composite picture of the observations, opinions, warnings, and advice from veteran pilots who have flown this vast land of ours that can help to make flying more pleasant and safer. Tips on flying into Mexico, Canada, and Alaska. ($1.40 Supt. Docs.) SN 050-007-00147-9.

91-16 Category II Operations—General Aviation Airplanes (8-7-67).

Sets forth acceptable means by which Category II operations may be approved in accordance with FAR Parts 23, 25, 61, 91, 97, and 135.

91-17 The Use of View Limiting Devices on Aircraft (2-20-68).

Alerts pilots to the continuing need to make judicious and cautious use of all view limiting devices on aircraft.

91-22A Altitude Alerting Devices/Systems (12-23-71).

Provides guidelines for designing, installing, and evaluating altitude alerting systems.

91-23A Pilot's Weight and Balance Handbook (6-9-77).

Provides an easily understood text on aircraft weight and balance for pilots who need to appreciate the importance of weight and balance control for safety of flight. Progresses from an explanation of basic fundamentals to the complete application of weight and balance principles in large aircraft operations. ($2.30 Supt. Docs.) SN 050-007-00405-2.

91-24 Aircraft Hydroplaning or Aquaplaning on Wet Runways (9-4-69).

Provides information to the problem of aircraft tires hydroplaning on wet runways.

91-25A Lost of Visual Cues During Low Visibility Landings (6-22-72).

Provides information concerning the importance of maintaining adequate visual cues during the descent below MDA or DA.

91-26 Maintenance and Handling of Air-Driven Gyroscopic Instruments (10-29-69).

Advises operators of general aviation aircraft of the need for proper maintenance of air-driven gyroscopic instruments and associated air filters.

91-28 Unexpected Opening of Cabin Doors (12-23-69).

Outlines the importance of assuring that cabin doors are properly closed prior to takeoff.

91-32 Safety in and Around Helicopters (5-7-71).

Provides suggestions to improve helicopter safety by means of acquainting nonflight crew personnel and passengers with the precautions and procedures necessary to avoid undue hazards.

91-33 Use of Alternate Grades of Aviation Gasoline for Grade 80/87 (10-6-71).

Provides information relating to the use of alternate grades of aviation gasoline when grade 80/87 is not available, and the resultant effects of the use of the alternate fuels which may have higher TEL (tetraethyl lead) content.

91-34 Model Aircraft Operating Standards (7-1-72).

Outlines safety standards for operators of model aircraft, and encourages voluntary compliance with these standards.

91-35 Noise, Hearing Damage, and Fatigue in General Aviation Pilots (3-28-72).

Aquaints pilots with the hazards of regular exposure to cockpit noise. Especially pertinent are piston-engine, fixed-wing, and rotary-wing aircraft.

91-36A VFR Flight Near Noise-Sensitive Areas (7-9-74).

Encourages pilots making VFR flights near noise-sensitive areas to fly at altitudes higher than the minimum permitted by regulation. National Park areas now included.

91-37A Truth in Leasing (1-16-78).

Provides information and guidance for leasees and conditional buyers of U.S. registered large civil aircraft. If you are planning to charter an airplane take a moment to learn about chartered and leased aircraft.

91-38 Large and Turbine-Powered Multiengine Airplanes, Part 91, Subpart D (12-13-72).

Sets forth guidelines and procedures to assist operators of large and turbine-powered multiengine airplanes in meeting the safety requirements of FAR, Part 91, Subpart D.

91-41 Ground Operational Procedures for Aircraft Engine Emission Reduction and Fuel Conservation (3-12-74).

Recommends ground operational procedures that will minimize air pollution from aircraft ground operations and conserve fuel.

91-42A Hazards of Rotating Propellers and Helicopter Rotor Blades (10-19-76).

Provides information on propeller- and rotor-to-person accidents and offers suggestions to reduce the frequency of their occurrence.

91-43 Unreliable Airspeed Indications (6-26-75).

Alerts pilots to the possibility of erroneous airspeed/Mach indications that may be caused by blocking or freezing of the pitot system and advises of corrective action that can be taken.

91-44 Emergency Locator Transmitters Operational and Maintenance Practices (2-20-76).

Provides guidelines relative to the installation, maintenance, and operation of emergency locator transmitters.

91-45A Airshow Waivers (5-16-77).

The purpose of this advisory circular is to provide prospective airshow sponsors with the information necessary to plan for and conduct safe, effective airshows. It is also intended to provide information pertaining to the procedures and requirements for issuance of airshow waivers.

91-46 Gyroscopic Instruments—Good Operating Practices (2-4-77).

Issued to re-emphasize to general aviation instrument-rated pilots the need to determine the proper operation of gyroscopic instruments, the importance of instrument cross-checks and proficiency in partial-panel operations.

91-47 Use of Portable Electronic Devices—Radio Receivers (3-23-77).

Intended to remind air carrier or commercial operators of the requirements of FAR 91.19 as they apply to pocket size radio receivers capable of reception in the 110-140 MHz band.

91-48 Acrobatics—Precision Flying With a Purpose (6-29-77).

Provides information to persons who are interested in acrobatic flying to improve their piloting skills as recreation, sport, or as a competitive activity.

91-49 General Aviation Procedures for Flight in North Atlantic Minimum Navigation Performance Specifications Airspace (8-23-77).

Sets forth acceptable means, but not the only means, of obtaining authorization to operate within specified airspace over the North Atlantic, designated as the NAT (North Atlantic) MNPS (Minimum Navigation Performance Specifications) airspace, after 0001 Greenwich Mean Time, Dec. 29, 1977. This requirement applies to persons operating under FAR Part 91 and for FAR Part 135 certificate holders, except those operating under Section 135.2.

91-50 Importance of Transponder Operation and Altitude Reporting (8-24-77).

Provides information and guidance concerning the importance of transponder operation and altitude reporting in the National Airspace System.

91-51 Airplane Deice and Anti-Ice Systems (9-15-77).

Provides information to pilots regarding ice protection system approval and the results of in-flight icing.

91.29-1 Special Structural Inspections (1-8-68).

Discusses occurrences which may cause structural damage affecting the airworthiness of aircraft.

91.79-1 Waivers of Section 91.79 of the Federal Aviation Regulations (4-21-76).

Announces the availability of waivers relating to FAR 91.79 and requests that interested persons contact any General Aviation District Office or Flight Standards District Office for specific information.

91.83-1A Canceling or Closing Flight Plans (3-25-75).

Outlines the need for canceling or closing flight plans promptly to avoid costly search and rescue operations.

95-1 Airway and Route Obstruction Clearance (6-17-65).

Advises all interested persons of the airspace areas within which obstruction clearance is considered in the establishment of Minimum En Route Instrument Altitudes (MEA's) for publication in FAR Part 95.

97-1A Runway Visual Range (RVR) (9-28-77).

Describes RVR measuring equipment and its operating use.

99-1 Security Control of Air Traffic (1-12-72).

Provides civil aviation with recommended practices for operating aircraft within or penetrating an Air Defense Identification Zone (ADIZ).

101-1 Waivers of Part 101, Federal Aviation Regulations (1-13-64).

Provides information on submission of applications and issuances of waivers to FAR Part 101.

103-4 Hazard Associated with Sublimation of Solid Carbon Dioxide (Dry Ice) Aboard Aircraft (5-1-74).

Discusses the potential hazard associated with the sublimation of dry ice aboard aircraft. Precautionary measures and simple rules of thumb are indicated in order to preclude environmentally hazardous conditions affecting crews and passengers aboard aircraft.

105-2 Sport Parachute Jumping (9-6-68).

Provides suggestions to improve sport parachuting safety; information to assist parachutists in complying with FAR Part 105; and a list of aircraft which may be operated with one cabin door removed, including the procedures for obtaining FAA authorization for door removal.

107-1 Aviation Security—Airports (5-19-72).

Furnishes guidance to those individuals and organizations having responsibilities under Part 107 of the Federal Aviation Regulations. It also provides recommendations for establishing and improving security for restricted or critical facilities and areas the security of which is not dealt with in Part 107.

Air Carrier and Commercial Operators and Helicopters

SUBJECT NO. 120

120-2A Precautionary Propeller Feathering To Prevent Runaway Propellers (8-20-63).

Emphasizes the need for prompt feathering when there is an indication of internal engine failure.

120-5 High Altitude Operations in Areas of Turbulence (8-26-63).

Recommends procedures for use by jet pilots when penetrating areas of severe turbulence.

120-7A Minimum Altitudes for Conducting Certain Emergency Flight Training Maneuvers and Procedures (7-27-70).

Issued to emphasize to all air carriers and other operators of large aircraft the necessity for establishing minimum altitudes above the terrain or water when conducting certain simulated emergency flight training maneuvers.

120-12 Private Carriage Versus Common Carriage by Commercial Operators Using Large Aircraft (6-24-64).

Provides guidelines for determining whether current or proposed transportation operations by air constitute private or common carriage.

120-16A Continuous Airworthiness Program (9-11-69).

Provides air carriers and commercial operators with guidance and information pertinent to certain provisions of Federal Aviation Regulations Parts 121 and 127.

120-17 Handbook for Maintenance Control by Reliability Methods (12-31-64).

Provides information and guidance materials which may be used to design or develop maintenance reliability programs which include a standard for determining the time limitations.

120-17 CH1 (6-24-66).

120-17 CH2 (5-6-68).

120-26D Civil Aircraft Operator Designators (11-11-76).

Revises the criteria and states the procedures for the assignment of International Civil Aviation Organization two-letter and FAA three-letter aircraft company designators.

120-27 Aircraft Weight and Balance Control (10-15-68).

Provides a method and procedures for weight and balance control.

120-27 CH1 (11-20-73).

Adds Part 123 to subject circular.

120-28B Criteria for Approval of Category IIIa Landing Weather Minima (12-1-77).

States an acceptable means, not the only means, for obtaining approval of Category IIIa minima and the installation approval of the associated airborne systems.

120-29 Criteria for Approving Category I and Category II Landing Minima for FAR 121 Operators (9-25-70).

Sets forth criteria used by FAA in approving turbojet landing minima of less than 300¾ or RVR 4,000 (Category I) and Category II minima for all aircraft.

120-29 CH1 (12-15-71).

Revises Appendix 1 and deletes statement in Appendix 2 regarding 19-foot criteria (does not apply when using an approved automatic landing system).

120-29 CH2 (7-26-72).

Clarifies the airborne system evaluation by stressing the necessity for meeting maintenance program requirements.

120-29 CH 3 (12-3-74).

Outlines the recent change in FAR Part 121 wherein both initial and recurrent pilot qualification for both Category I and II proficiency checks may be preformed in a visual simulator.

120-30A Reporting Requirements of Air Carriers, Commerical Operators, Travel Clubs, and Air Taxi Operators of Large and Small Aircraft (9-8-76).

This advisory circular is issued to clarify the mechanical reliability reporting requirements contained in Parts 121, 127, and 135 of the Federal Aviation Regulations (FAR) and the accident and incident reporting requirements of Part 830 (old Part 430) of the National Transportation Safety Board (NTSB), Safety Investigation Regulations.

120-31A Operational and Airworthiness Approval of Airborne Omega Radio Navigation Systems as a Means of Updating Self-Contained Navigation Systems (4-21-77).

Sets forth an acceptable means, but not the only means, of obtaining airworthiness and operational approval of airborne OMEGA navigation systems used in updating self-contained navigation systems such as Doppler and Inertial Radar for operations outside the United States under FAR Part 121.

120-32 Air Transportation of Handicapped Persons (3-25-77).

Identifies some of the problems handicapped air travelers face and provides some guidelines to airline personnel to help alleviate these problems.

120-33 Operational Approval of Airborne Long-Range Navigation Systems for Flight Within the North Atlantic Minimum Navigation Performance Specifications Airspace (6-24-77).

Sets forth acceptable means, but not the only means, for operators certificated under FAR Parts 121 and 123 and operators utilizing large aircraft under FAR 135.2, to obtain approval to operate within a specific airspace over the NAT (North Atlantic) MNPS (Minimum Navigation Performance Specifications) airspace after 0001 Greenwich Mean Time, Dec. 29, 1977.

120-34 Air Transportation of Mental Patients (6-29-77).

Provides guidelines to organizations and persons responsible for transportation of mental patients and outlines the responsibilities of those escorting such persons.

121-1A Standard Operations Specifications—Aircraft Maintenance Handbook (6-26-73).

Provides procedures acceptable to the Federal Aviation Administration which may be used by operators when establishing inspection intervals and overhaul times.

121-1A CH 1 (1-23-75).

Updates the overhaul and inspection/check period of selected airframes, powerplants, propellers, and appliances in relation to current industry standards.

121-1A CH 2 (8-19-76).

121-1A CH 3 (2-18-77).

121-6 Portable Battery-Powered Megaphones (1-5-66).

Sets forth an acceptable means for complying with rules (applicable to various persons operating under Part 121 of the Federal Aviation Regulations) that prescribe the installation of approved megaphones.

121-12 Wet or Slippery Runways (8-17-67).

Provides uniform guidelines in the application of the "wet runway" rule by certificate holders operating under FAR 121.

121-13 Self-Contained Navigation Systems (Long Range) (10-14-69).

States an acceptable means, not the only means, of compliance with the referenced sections of the FAR as they apply to persons operating under Parts 121 or 123 who desire approval of Doppler RADAR navigation systems or Inertial Navigation Systems (INS) for use in their operations.

121-13 CH 1 (7-31-70).

Assures standardization of the Minimum Equipment List (MEL) with respect to Inertial Navigation Systems (INS) through the appropriate Flight Operations Evaluation Board (FOEB).

121-13 CH 2 (12-21-70).

Permits all flight training for Doppler and INS qualification, to be completed in a simulator or training device approved for conducting the required pilot training and qualifications in the use of these systems.

121-14A Aircraft Simulator Evaluation and Approval (2-9-76).

Sets forth one means that would be acceptable to the Administrator for approval of aircraft simulators or other training devices requiring approval under FAR 121.407.

121-16 Maintenance Certification Procedures (11-9-70).

Provides guidance for the preparation of an Operations Specification—Preface Page which will afford nominal and reasonable relief from approved service and overhaul time limits when a part is borrowed from another operator.

121-17 Aviation Security: Certain Air Carriers and Commercial Operators—Security Programs and Other Requirements (3-14-72).

Provides general information regarding the requirements of FAR Amdt. 121-85.

121-18 Aviation Security—Carriage of Weapons and Escorted Persons (7-15-75).

Provides information and guidance for the implementation of amendments to FAR Part 121 regarding the carriage of weapons on aircraft and for the carriage of persons in the custody of law enforcement officers.

121-19 Aviation Security—Property Acceptance and Handling Procedures—Indirect Air Carriers (3-17-76).

Provides information and guidance which may be used by "indirect air carriers" when providing property to be carried by "direct air carriers" or by the operator of any civil aircraft for transportation in air commerce.

121-20 Aviation Security: Supplemental Air Carriers (3-17-76).

Provides supplemental air carriers with information concerning recommended general security measures applicable to charter operations that should minimize the effects of crimes directed against air transportation.

121-21 Information Guide for Training Programs and Manual Requirements in the Air Transportation of Hazardous Materials (7-30-76).

Provides certificate holders under Parts 121 and 135 of the FARs with information relevant to recent amendment Docket HM-112 that incorporated FAR Part 103 into Title 49 of the CFR as Part 175. Outlines some of the substantive changes in the requirements for air transportation of hazardous materials.

121-22 Maintenance Review Board (MRB) (1-12-77).

Provides guidelines for establishing and conducting a MRB on newly manufactured aircraft, powerplant, or appliance to be used in air carrier service.

121-23 Preparation and Loading of Magnetron Tubes and Magnetic Materials for Air Shipments (2-10-77).

Provides information regarding the preparation and loading of magnetron tubes and magnetic materials for shipment in civil aircraft.

121-24 Passenger Safety Information Briefing and Briefing Cards (6-23-77).

Contains information and guidance material for use by air carriers in the preparation of passenger safety information briefings.

121-25 Additional Weather Information: Domestic and Flag Air Carriers (9-16-77).

Provides guidance and standards to domestic and flag air carriers for approval of a system for obtaining forecasts and reports of adverse weather phenomena.

121.195(d)-1 Alternate Operational Landing Distances for Wet Runways; Turbojet Powered Transport Category Airplanes (11-19-65).

Sets forth an acceptable means, but not the only means, by which the alternate provision of section 121.195(d) may be met.

123-1 Air Travel Clubs (10-17-68).

Sets forth guidelines and procedures to assist air travel clubs using large aircraft in meeting safety requirements of FAR Part 123.

129-1 Foreign Air Carriers—Security Programs and Other Requirements—FAR Part 129 (9-25-75).

Provides guidance to foreign air carriers concerning the requirements of FAR Part 129, Sections 129.25 and 129.27.

133-1 Rotorcraft External-Load Operations in Accordance with FAR Part 133 (7-15-77).

Provides information for persons interested in applying for a Rotorcraft External-Load Operator Certificate.

135.144-1 Small Propeller-Driven Air Taxi Airplanes That Meet Section 135.144 (4-13-72).

Provides a summary of and information on small propeller-driven air taxi airplanes that comply with section 135.144 and may continue operations under FAR Part 135 after May 31, 1972, with 10 or more passenger seats.

135.155-1 Alternate Static Source for Altimeters and Airspeed and Vertical Speed Indicators (2-16-65).

Sets forth an acceptable means of compliance with provision in FAR Part 135 and Part 23 dealing with alternate static courses.

135-1C Air Taxi Aircraft Weight and Balance control (2-10-77).

Provides the procedures for developing a weight and balance control system for small aircraft operating in the air taxi fleet under FAR Part 135.

135-2A Air Taxi Operators of Large Aircraft (11-16-73).

Provides guidelines for use by air taxi operators or applicants who desire to obtain authorization to operate large aircraft (more than 12,500 pounds maximum certificated takeoff weight) in air taxi operations.

135-3A Air Taxi Operators and Commercial Operators of Small Aircraft (1-16-75).

Sets forth guidelines and procedures to assist persons in complying with the requirements of Federal Aviation Regulations, Part 135.

135-4A Aviation Security: Air Taxi Commercial Operators (ATCO) (4-15-76).

Provides recommended security measures applicable to ATCO operations that should minimize the effects of crimes directed against air transportation.

135-5A Maintenance Program Approval for Carry-On Oxygen Equipment for Medical Purposes (11-23-76).

Provides a means whereby air taxi operators may submit a maintenance program to comply with FAR Part 135, Section 135.114.

137-1 Agricultural Aircraft Operations (11-29-65).

Explains and clarifies the requirements of FAR Part 137 and provides additional information, not regulatory in nature, which will assist interested persons in understanding the operating privileges and limitations of this Part.

139.12-1 Airport Operations Specifications (2-3-75).

Presents guidelines to assist airport operators in developing airport operations specifications in compliance with the requirements of amended FAR Part 139.

139.49-1 Programs for Training of Fire Fighting and Rescue Personnel (11-12-74).

Outlines suggested training programs for airport fire fighting and rescue personnel involved in operating airport fire fighting and rescue equipment and the principles of aircraft fire fighting and rescue techniques.

Schools and Other Certificated Agencies

SUBJECT NO. 140

140-1J Consolidated Listing of FAA Certificated Repair Stations (7-27-77).

Provides a revised directory of all FAA certificated repair stations as of May 31, 1977.

140-2K List of Certificated Pilot Schools (4-25-77).

Provides a list of FAA certificated pilot flight and ground schools as of Nov. 1976.

140-3B Approval of Pilot Training Courses Under Subpart D of Part 141 of the FAR (1-8-70).

The title is self-explanatory.

140-5 Radio Maintenance Technician School Curriculum (8-11-71).

Provides information on curriculum subjects for persons desiring to establish radio maintenance technician training courses.

141-1 Pilot School Certification (8-29-74).

Sets forth guidelines to assist persons in obtaining a pilot school certificate and associated ratings under FAR Part 141 (revised).

141-2A Written Tests Prepared by Pilot Schools With Examining Authority Under Part 141 (Revised) of the Federal Aviation Regulations (10-3-75).

Provides guidance to FAR Part 141 Pilot Schools with examining authority in developing final written tests for FAA certificates and ratings which are equal in scope, depth, and difficulty to comparable written tests prescribed by the Administrator. Also prescribes procedures for administering, maintaining security of, and replacing those tests.

143-1E Ground Instructor Written Test Guide—Basic & Advanced (1-24-77).

Outlines the scope of basic knowledge requirements for a ground instructor; outlines source material to obtain this knowledge; presents a sample test with answers and explanations. ($2.00 Supt. Docs.) SN 050-007-00382-0.

143-2C Ground Instructor—Instrument—Written Test Guide (1-30-76).

Provides information to applicants for the instrument ground instructor rating about the subject areas covered in the examination and illustrated by a study outline, a list of study materials, and a sample examination with answers. ($1.40 Supt. Docs.) SN 050-007-00376-5.

145-2 Repair Station Limited Ratings Beech 18 Series Aircraft (4-21-76).

Advises of a required limited repair station rating to perform X-ray inspection of the Beech 18 wing and center section spar, and of the procedures for application.

145.101-1A Application for Air Agency Certificate—Manfacturer's Maintenance Facility (3-12-77).

Explains how to obtain a repair station certificate.

147-2R Directory of FAA Certificated Aviation Maintenance Technician Schools (4-12-77).

Provides a revised directory of all FAA certificated aviation maintenance technician schools as of Nov. 1976.

147-3 Phase III, A National Study of the Aviation Mechanics Occupation (3-22-71).

Announces the availability for purchase by the public of a reprint of a report of Phase III, A National Study of the Aviation Mechanics Occupation.

147-4 Reports Availability of a Survey of Text Materials Used in Aviation Maintenance Technician Schools (9-3-74).

Announces the public availability of the 1974 report on A Survey of Test Materials Used in Aviation Maintenance Technician Schools.

149-2H Listing of Federal Aviation Administration Certificated Parachute Lofts (5-10-76).

Provides a revised listing of all FAA certificated parachute lofts as of Jan. 31, 1976.

Airports

SUBJECT NO. 150

AIRPORT PLANNING

150/5000-3D Address List for Regional Airports Divisions and Airport District Offices (10-18-77).

Transmits the address list for all regional Airports Divisions and Airport District Offices.

150/5050-3A Planning the State Airport System (June 1972).

Provides general guidance in preparing a State airport system plan. ($2.50 Supt. Docs.) SN 050-007-00184-3.

150/5050-4 Citizen Participation in Airport Planning (9-26-75).

Provides guidance for citizen involvement in airport planning. Although not mandatory for airport grant programs, it demonstrates the need for early citizen participation.

150/5050-5 The Continuous Airport System Planning Process (11-28-75).

The purpose of this advisory circular is to provide guidance on the Continuous Airport System Planning Process (CASPP). This process is utilized in establishing a planning capability to monitor and assess the effects of changes in the many variables and issues influencing a plan with the objective of maintaining a plan responsive to current and forecast conditions. In addition to describing the components of a CASPP, sponsor organizational structures and Federal financial participation in continuous planning activities are discussed.

150/5050-6 Airport-Land Use Compatibility Planning (12-30-77).

Provides generalized quidance for compatible land use planning in the vicinity of both new and existing airports. Provides guidance which may be used in developing noise control plans. ($2.50 Supt. Docs.) SN 050 007-00417-6.

150/5060-1A Airport Capacity Criteria Used in Preparing the National Airport Plan (7-8-68).

Presents the method used by the Federal Aviation Administration for determining when additional runways, taxiways, and aprons should be recommended in the National Airport Plan. The material is also useful to sponsors and engineers in developing Airport Layout Plans and for determining when additional airport pavement facilities should be provided to increase aircraft accommodation capacity at airports.

150/5060-3A Airport Capacity Criteria Used in Long-Range Planning (12-24-69).

Describes the method used by the Federal Aviation Administration for

determining the approximate practical hourly and practical annual capacities of various airport runway configurations and is used in long-range (10 years or more) planning for expansion of existing airports and construction of new airports to accommodate forecast demand.

150/5060-4 Announcement of Availability—Federal Aviation Administration Technical Reports on Airport Capacity and Aircraft Delay (4-29-77).

Announces the availability of Federal Aviation Administration technical reports and computer programs describing techniques for determining airport capacity and aircraft delay. Provides ordering information.

150/5070-3 Planning the Airport Industrial Park (9-30-65).

Provides guidance to communities, airport boards, and industrial developers for the planning and development of Airport Industrial Parks.

150/5070-5 Planning and Metropolitan Airport System (5-22-70).

Gives guidance in developing airport-system plans for large metropolitan areas. It may be used by metropolitan planning agencies and their consultants in preparing such system plans and by the FAA in reviewing same. ($1.65 Supt. Docs.) SN 050-008-00003-7.

150/5070-6 Airport Master Plans (2-5-71).

Provides guidance for the preparation of individual airport master plans as provided for under the Airport Airway Development Act of 1970. ($3.00 Supt. Docs.) SN 050-008-00004-5.

150/5090-2 National Airport Classification System (Airport System Planning) (6-25-71).

Sets forth the new national airport classification system. The system is designed for use in the identification and classification of airports within the National System of Airports and for use as a planning tool in long-range airport system planning.

FEDERAL-AID AIRPORT PROGRAMS

150/5100-3A Federal-aid Airport Program-Procedures Guide for Sponsors (9-20-68).

Provides guidance to public agencies that sponsor or propose to sponsor projects under the Federal-aid Airport Program (FAAP) authorized by the Federal Airport Act.

150/5100-3A CH 1 (11-28-69).

Transmits revised pages to subject advisory circular.

150/5100-6A Labor Requirements for Airport Development Aid Program (ADAP) Contracts (1-31-73).

Covers the basic labor requirements for the Airport Development Aid Program.

150/5100-6A CH 1 (3-16-73).

Transmits a revision to delete page 3-1 from subject Advisory Circular.

150/5100-7A Requirement for Public Hearing in the Airport Development Aid Program (2-25-72).

Provides guidance to sponsors of airport development projects under the Airport Development Aid Program (ADAP) on the necessity for and conduct of public hearings.

150/5100-8 Request for Aid; Displaced Persons; Public Hearings; Environmental Considerations; Opposition to the Project (1-19-71).

Provides general guidance on the information and coordination required in support of a request for aid for an airport development project under the Airport and Airway Development Act of 1970.

150/5100-9 Engineering Services Under the Airport Development Aid Program (ADAP) (7-1-72). Consolidated reprint March 1977 includes Change 1.

Provides guidance for airport sponsors and Federal Aviation Administration Offices in the definition, selection, review, and approval of engineering services used under subject program.

150/5100-10A Accounting Records Guide for Airport Aid Program Sponsors (4-13-76).

This advisory circular sets forth recordkeeping requirements imposed on sponsor of Airport Development Aid Program (ADAP) and the Planning Grant Program (PGP) projects by the Airport and Airway Development Act of 1970, as amended. In addition, the Federal Aviation Regulations (FARs) require a sponsor to establish and maintain a financial management system that meets the standards set forth in FAR 152, Appendix K. This circular provides detailed explanations of these requirements.

150/5100-11 Land Acquisition and Relocation Assistance Under the Airport Development Aid Program (2-10-75).

Provides guidance to sponsors of airport development projects under the Airport Development Aid Program to meet the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (Public Law 91-646).

150/5100-12 Electronic Navigational Aids Approved for Funding Under the Airport Development Aid Program (9-20-76).

Provides a list of the electronic navigational aids equipment which are approved for funding under the ADAP.

150/5100-13 Development of State Standards for General Aviation Airports (3-1-77).

Provides guidelines and programming procedures for the development of state standards for general aviation airports as provided for in the Airport and Airway Development Act Amendments of 1976.

SURPLUS AIRPORT PROPERTY CONVEYANCE PROGRAMS

150/5150-2A Federal Surplus Personal Property for Public Airport Purposes (8-3-73).

Acquaints public airport owners and other interested parties with the Federal Surplus Personal Property Program for public airports and to outline procedures to be used in applying for and acquiring surplus personal property for this purpose.

150/5150-2A CH 1 (1-21-74).

Adds material to paragraph 24, Chapter 6, which was inadvertently omitted in the Advisory Circular during preparation.

AIRPORT COMPLIANCE PROGRAM

150/5190-1 Minimum Standards for Commercial Aeronautical Activities on Public Airports (8-18-66).

Gives to owners of public airports information helpful in the development and application of minimum standards for commercial aeronautical activities.

150/5190-2A Exclusive Rights at Airports (4-4-72). (Consolidated reprint incorporates ch. 1.)

Makes available to public airport owners, and to other interested persons, basic information and guidance on FAA's policy regarding exclusive rights at public airports on which Federal funds, administered by FAA, have been expended.

150/5190—4 A Model Zoning Ordinance to Limit Height of Objects Around Airports (8-23-77).

Provides a model zoning ordinance to be used as a guide to control the height of objects around airports.

AIRPORT SAFETY—GENERAL

150/5200—3A Bird Hazards to Aircraft (3-2-72).

Transmits to the aviation public the latest published information concerning the reduction of bird strike hazards to aircraft in flight and in the vicinity of airports.

150/5200—4 Foaming of Runways (12-21-66).

Discusses runway foaming and suggests procedures for providing this service.

150/5200—5 Considerations for the Improvement of Airport Safety (2-2-67).

Emphasizes that, in the interest of accident/incident prevention, airport management should conduct self-evaluations and operational safety inspections. An exchange of information and suggestions for the improvement of airport safety is also suggested.

150/5200—6A Security of Aircraft at Airports (6-28-68).

Directs attention to the problem of pilferage from aircraft on airports and suggests action to reduce pilferage and the hazards that may result therefrom.

150/5200—8 Use of Chemical Controls to Repel Flocks of Birds at Airports (5-2-68).

Acquaints airport operators with new recommendations on the use of chemical methods for dispersing flocks of birds.

150/5200—9 Bird Reactions and Scaring Devices (6-26-68).

Transmits a report on bird species and their responses and reactions to scaring devices.

150/5200—11 Airport Terminals and the Physically Handicapped (11-27-68).

Discusses the problems of the physically handicapped air traveler and suggests features that can be incorporated in modification or new construction of airport terminal buildings.

150/5200—12 Fire Department Responsibility in Protecting Evidence at the Scene of an Aircraft Accident (8-7-69).

Furnishes general guidance for employees of airport management and other personnel responsible for firefighting and rescue operations, at the scene of an aircraft accident, on the proper presentation of evidence.

150/5200—13 Removal of Disabled Aircraft (8-27-70).

Discusses the responsibility for disabled aircraft removal and emphasizes the need for prearranged agreements, plans, equipment, and improved coordination for the expeditious removal of disabled aircraft from airport operating areas. It also illustrates some of the various methods used, equipment employed, equipment available, and concepts for aircraft recovery.

150/5200-14 Results of 90-Day Trial Exercise on Fire Department Activity (9-8-70).

Transmits statistical data collected during a 90-day trial exercise conducted to determine the relationship between aircraft fire and rescue service activities and airport aeronautical operations.

150/5200-15A Availability of the International Fire Service Training Association's (IFSTA) Aircraft Fire Protection and Rescue Procedures Manual (5-4-77).

Announces the availability of the subject manual.

150/5200-16 Announcement of Report AS-71-1 "Minimum Needs for Airport Fire Fighting and Rescue Services" Dated January 1971 (4-13-71).

Announces the availability of the subject report and describes how to get it.

150/5200-17 Emergency Plan (2-5-72). (Consolidated reprint incorporates Ch 1.)

Contains guidance material for airport management to use in developing an emergency plan at civil airports.

150/5200-18 Airport Safety Self-Inspection (2-5-72).

Suggests functional responsibility, procedures, a checklist, and schedule for an airport safety self-inspection.

150/5200-19 Availability of Report No. FAA-RD-71-20 "An Analysis of Airport Snow Removal and Ice Control" dated March 1971 (11-23-71).

Announces the avilability of subject report.

150/5200-21 Announcing the Availability of U.S. Air Force Technical Order (T.O. 00-105-9) Aircraft Emergency Rescue Information (5-23-73).

Explains the nature of the Technical Order and tells how it can be obtained by airport fire departments which are under the Airport Certification Program.

150/5200-22 Announcing the Availability of the International Civil Aviation Organization Airport Services Manual, DOC-9137-AN-898, Part 3, Bird Control and Reduction (3-16-76).

Announces the availability of the manual, explains its purpose, and tells how to obtain copies.

150/5200-23 Airport Snow and Ice Control (11-1-76).

Provides guidance to assist airport owners/operators to establish or improve airport snow and ice control programs.

150/5200-23 CH 1 Airport Snow and Ice Control (2-6-78).

Transmits a revision to the sand gradation table used on airport operational surfaces.

150/5210-2 Airport Emergency Medical Facilities and Services (9-3-64).

Provides information and advice so that airports may take specific voluntary preplanning actions to assure at least minimum first-aid and medical readiness appropriate to the size of the airport in terms of permanent and transient personnel.

150/5210-5 Painting, Marking, and Lighting of Vehicles Used on an Airport (8-31-66).

Makes recommendations concerning safety, efficiency, and uniformity in the interest of vehicles used on the aircraft operational area of an airport.

150/5210-6B Aircraft Fire and Rescue Facilities and Extinguishing Agents (1-26-73). (Consoliated reprint incorporates changes 1 and 2.)

Outlines scales of protection considered as the recommended level compared with the minimum level in Federal Aviation Regulation Part 139.49 and tells how these levels were established from test and experience data.

150/5210-7A Aircraft Fire and Rescue Communications (3-16-72).

Provides guidance information for use by airport management in establishing communication and alarm facilities by which personnel required to respond to and function at aircraft ground emergencies may be alerted and supplied with necessary information.

150/5210-8 Aircraft Firefighting and Rescue Personnel and Personnel Clothing (1-13-67).

Provides guidance concerning the manning of aircraft fire and rescue trucks, the physical qualifications that personnel assigned to these trucks should meet, and the protective clothing with which they should be equipped.

150/5210-9 Airport Fire Department Operating Procedures During Periods of Low Visibility (10-27-67).

Suggests training criteria which airport management may use in developing minimum response times for aircraft fire and rescue trucks during periods of low visibility.

150/5210-10 Airport Fire and Rescue Equipment Building Guide (12-7-67).

This title is self-explanatory.

150/5210-11 Response to Aircraft Emergencies (4-15-69).

Informs airport operators and others of an existing need for reducing aircraft firefighting response time, and outlines a uniform response time goal of 2 minutes within aircraft operational areas on airports.

150/5210-12 Fire and Rescue Service for Certificated Airports (3-2-72).

Furnishes guidance and explains to Federal Aviation Administration (FAA) airport inspectors and airport management the minimum criteria to be applied when evaluating the aircraft fire and rescue service required at an airport for its compliance with the requirements of FAR Part 139.

150/5210-13 Water Rescue Plans, Facilities, and Equipment (5-4-72).

Suggests planning procedures facilities, and equipment to effectively perform rescue operations when an aircraft lands in a body of water, swamp, or tidal area where normal aircraft fire- fighting and rescue service vehicles are unable to reach the accident scene.

150/5220-1 Guide Specification for a Light-Weight Airport Fire and Rescue Truck (7-24-64).

Describes a vehicle with performance capabilities considered as minimum for an acceptable light rescue truck.

150/5220-4 Water Supply Systems for Aircraft Fire and Rescue Protection (12-7-67).

The title is self-explanatory.

150/5220-6 Guide Specification for 1,000-Gallon Tank Truck (4-10-68).

Assists airport management in the development of local procurement specifications.

150/5220-9 Aircraft Arresting System for Joint Civil/Military Airports (4-6-70).

Updates existing policy and describes and illustrates the various types of military aircraft emergency arresting systems that are now installed at various joint civil/military airports. It also informs users of criteria concerning installations of such systems at joint civil/military airports.

150/5220-10 Guide Specification for Water/Foam Type Aircraft Fire and Rescue Trucks (5-26-72). (Consolidated reprint incorporates changes 1 and 2.)

Assists airport management in the development of local procurement specifications.

150/5230-3 Fire Prevention During Aircraft Fueling Operations (4-8-69).

This advisory circular provides information on fire preventive measures which aircraft servicing personnel should observe during fueling operations.

150/5240-7 A Fuel/Energy Conservation Guide for Airport Operators (2-19-74).

Identified potential areas where fuel and energy usage can be conserved to assist airport operators in their voluntary actions in reducing fuel and energy consumption.

150/5280-1 Airport Operations Manual (6-16-72).

Sets forth guidelines to assist airport operators in developing an Airport Operations Manual in compliance with the requirements of FAR Part 139.

150/5280-3 Fire Fighting Exemptions Under the 1976 Amendment to the Federal Aviation Act (2-4-77).

Outlines the type of information that may be used as justification in supporting petitions for exemption from a portion or all of the fire fighting and rescue requirements of Part 139.

DESIGN, CONSTRUCTION, AND MAINTENANCE—GENERAL

150/5300-2C Airport Designs Standards—Site Requirements for Terminal Navigational Facilities (9-21-73). Consolidated reprint 1976 includes Change 1.

Provides information regarding the relative location and siting requirements for the terminal navigation facilities located on or close to an airport.

150/5300-4B Utility Airports—Air Access to National Transportation (6-24-75). (Consolidated reprint incorporates ch. 1.)

Establishes design standards for utility airports which are constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight or less.

150/5300-5 Airport Reference Point (9-26-68).

Defines and presents the method for calculating an airport reference point.

150/5300-6 Airport Design Standards, General Aviation Airports, Basic and General transport (7-14-69). Consolidated Reprint August 1975 Incorporates Changes 1 and 2.

Provides recommended design criteria for the development of larger than general utility airports.

150/5300-7B FAA Policy on Facility Relocations Occasioned by Airport Improvements or Changes (11-8-72).

Reaffirms the aviation community of the FAA policy governing responsibility for funding relocation, replacement and modification to air traffic control and air navigation facilities that are made necessary by improvements or changes to the airport.

150/5300-8 Planning and Design Criteria for Metropolitan STOL Ports (11-5-70).

Provides the criteria recommended for the planning and design of STOL ports in metropolitan areas.

150/5300-8 CH 1 (4-3-75).

Transmits revised requirements for color coding of threshold and runway end lights on STOL runways.

150/5300-9 Predesign and Preconstruction Conferences (ADAP) Projects (9-10-73).

Emphasizes the need for, and encourages the use of, predesign and preconstruction conferences as valuable tools in the administration of construction contracts funded under the ADAP.

150/5300-9 CH 1 Predesign and Preconstruction (11-11-77).

Transmits revisions to paragraph 5 of the advisory circular.

150/5300-10 Federal Aviation Administration Funded Study—Analysis of General Aviation Airports Developed With and Without Federal Financial Assistance (7-21-75).

Transmits the recommendations and conclusions of a study conducted for the FAA. Advises the public as to how they may obtain the reports.

150/5320-5B Airport Drainage (7-1-70).

Provides guidance for engineers, airport managers, and the public in the design and maintenance of airport drainage systems. ($1.30 Supt. Docs.) SN 050-007-00149-5.

150/5320-6B Airport Pavement Design and Evaluation (5-28-74). Consolidated reprint 1976 includes change 1.

Provides guidance to the public for the design and evaluation of pavements at civil airports.

150/5320-10 Environmental Enhancement at Airports—Industrial Waste Treatment (4-16-73).

Provides basic information on the nature and treatment of industrial wastes produced at airports.

150/5320-10 CH 1 (11-18-74).

150/5320-11 Runway Categorization—Aeronautical Studies—Airport Owners' Responsibilities (9-21-73).

Emphasizes the need for airport owners to maintain runway and approach zone categories and locations on file with FAA so they may be given consideration under the regulations of FAR Part 77.

150/5320-12 Methods for the Design, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces (6-30-75).

Provides guidance on methods that can be used to provide and maintain airport pavement surface friction characteristics.

150/5325-2C Airport Design Standards—Airports Served by Air Carriers—Surface Gradient and Line-of-Sight (2-6-75). Consolidated reprint 1975 includes Change 1.

Establishes design standards for airports served by certificated air carriers to assist engineers in (1) designing the gradients of airports surface areas used to accommodate the landing, takeoff, and other ground movement requirement of airplanes while (2) providing adequate line of sight between airplanes operating on airports.

150/5325-3 Background Information on the Aircraft Performance Curves for Large Airplanes (1-26-65). Consolidated Reprint May 1974. Includes Change 1.

Provides airport designers with information on aircraft performance curves for design which will assist them in an objective interpretation of the data used for runway length determination.

150/5325-4 Runway Length Requirements for Airport Design (4-5-65). Consolidated Reprint 1977 Includes Changes 1 through 11.

Presents aircraft performance curves and sets forth standards for the determination of runway lengths to be provided at airports. The use of these standards is required for project activity under the Federal-Aid Airport Program when a specific critical aircraft is considered as the basis for the design of a runway.

150/5325-4 CH 12 (7-27-77).

150/5325-5B Aircraft Data (7-30-75). Consolidated reprint 1976 includes Change 1.

Presents a listing of principal dimensions of aircraft affecting airport design for guidance in airport development.

150/5325-6A Airport Design Standards—Effects and Treatment of Jet Blast (7-13-72).

Presents criteria on the jet engine blast velocities associated with aircraft in common use in air carrier service, the effects of these blast velocities during ground operations, and suggested means to counteract or minimize these effects.

150/5325-8 Compass Calibration Pad (5-8-69).

Provides guidelines for the design, location on the airport, and construction of a compass calibration pad, and basic information concerning its use in determining the deviation error in an aircraft magnetic compass.

150/5335-1A Airport Design Standards—Airports Served by Air Carriers—Taxiways (5-15-70). Consolidated reprint incorporates changes 1 and 2.

Provides criteria on taxiway design for airports served by certificated route air carriers with present airplanes and those anticipated in the near future.

150/5335-2 Airport Aprons (1-27-65).

Provides the criteria for airport aprons which are acceptable in accomplishing a project meeting the eligibility requirements of the Federal-aid Airport Program.

150/5335-3 Airport Design Standards—Airports Served by Air Carriers—Bridges and Tunnels on Airports (4-19-71). Consolidated reprint June 1977 includes Change 1.

Provides general guidance to those contemplating the construction of a bridge-type structure to allow aircraft to cross over an essential surface transportation mode.

150/5335-4 Airport Design Standards—Airports Served by Air Carriers—Runway Geometrics (7-21-75).

Provides criteria on runway geometric design for airports served by certificated route air carriers.

150/5335-4 Ch 1 (6-14-76).

150/5340-1D Marking of Paved Areas on Airports (1-19-73).

Describes standards for marking serviceable runways and taxiways as well as deceptive, closed, and hazardous areas on airports.

150/5340-4C Installation Details for Runway Centerline and Touchdown Zone Lighting Systems (5-6-75). Consolidated March 1977 includes Change 1.

Describes standards for the design and installation of runway centerline and touchdown zone lighting systems.

150/5340-5A Segmented Circle Airport Marker System (9-10-71).

Sets forth standards for a system of airport marking consisting of certain pilot aids and traffic control devices.

150/5340-14B Economy Approach Lighting Aids (6-19-70). Consolidated reprint March 1977 includes Changes 1 and 2.

Describes standards for the design, selection, sitting, and maintenance of economy approach lighting aids.

150/5340-17A Standby Power for Non-FAA Airport Lighting Systems (3-19-71).

Describes standards for the design, installation, and maintenance of standby power for nonagency owned airport visual aids associated with the National Airspace System (NAS).

150/5340-18 Taxiway Guidance System (9-27-68).

Describes the recommended standards for design, installation, and maintenance of a taxiway guidance sign system.

150/5340-19 Taxiway Centerline Lighting System (11-14-68).

Describes the recommended standards for design, installation, and maintenance of a taxiway centerline lighting system.

150/5340-20 Installation Details and Maintenance Standards for Reflective Markers for Airport Runway and Taxiway Centerlines (2-17-69).

Describes standards for the installation and maintenance of reflective markers for airport runway and taxiway centerlines.

150/5340-21 Airport Miscellaneous Lighting Visual Aids (3-25-71).

Describes standards for the system design, installation, inspection, testing, and maintenance of airport miscellaneous visual aids; i.e., airport beacons, beacon towers, wind cones, wind tees, and obstruction lights.

150/5340-22 Maintenance Guide for Determining Degradation and Cleaning of Centerline and Touchdown Zone Lights (4-20-71). Consolidated reprint August 1977 includes Change 1.

Contains maintenance recommendations for determining degradation and cleaning of centerline and touchdown zone lights installed in airport pavement.

150/5340-23A Supplemental Wind Cones (6-24-75).

Describes standards for the performance and location of supplemental wind cones.

150/5340-24 Runway and Taxiway Edge Lighting System (9-3-75).

Describes standards for the design, installation, and maintenance of runway and taxiway edge lighting.

150/5340-24 CH 1 Runway and Taxiway Edge Lighting System (11-25-77).

Transmits changes to the basic advisory circular.

150/5340-25 Visual Approach Slope Indicator (VASI) Systems (9-24-76).

Describes standards for the design, installation, and maintenance of visual approach slope indicator systems.

150/5340-25 CH 1 (5-3-77).

Transmits page changes to subject advisory circular.

150/5340-27 Air-to-Ground Radio Control of Airport Lighting Systems (8-10-77).

Describes operating criteria for air-to-ground radio control of airport lighting systems.

150/5345-1E Approved Airport Lighting Equipment (9-9-76). (Consolidated reprint incorporates changes 1 and 2.)

Contains lists of approved airport lighting equipment and manufacturers qualified to supply their product in accordance with the indicated specification requirements.

150/5345-2 Specification for L-810 Obstruction Light (11-4-63). Consolidated reprint June 1977 includes Change 1.

Required for FAAP project activity.

150/5345-3C Specification for L-821 Panels for Remote Control of Airport Lighting (3-30-77).

Describes the specification requirements for an airport lighting control panel for the remote control of airport lighting circuits and is published by the Federal Aviation Administration for the guidance of the public.

150/5345-4 Specification for L-829 Internally Lighted Airport Taxi Guidance Sign (10-15-63). Consolidated reprint June 1977 includes Change 1.

Required for FAAP project activity.

150/5345-5 Specification for L-847 Circuit Selector Switch, 5,000 Volt 20 Ampere (9-3-63).

Required for FAAP project activity.

150/5345-7C Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits (2-4-76).

Describes the specification requirements for underground electrical cables for airport lighting circuits. Published by the FAA for the guidance of the public.

150/5345-10C Specification for L-828 Constant Current Regulators (10-22-71).

Describes the subject specification requirements and is published by the Federal Aviation Administration for the guidance of the public.

150/5345-11 Specification for L-812 Static Indoor Type Constant Current Regulator Assembly, 4 kW and 7½ kW, With Brightness Control for Remote Operations (3-2-64).

Required for FAAP project activity.

150/5345-12B Specification for L-801 Beacon (9-8-77).

Describes the subject specification requirements.

150/5345-13 Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits (1-6-64).

Required for FAAP project activity.

150/5345-18 Specification for L-811 Static Indoor Type Constant Current Regulator Assembly, 4 kW; With Brightness Control and Runway Selection for Direct Operation (3-3-64). Consolidated reprint Sept. 1974 includes Change 1.

Required for FAAP project activity.

150/5345-21 Specification for L-813 Static Indoor Type Constant Current Regulator Assembly; 4 kW and 7½ kW; for Remote Operation of Taxiway Lights (7-28-64).

Describes the subject specification requirements.

150/5345-26A Specification for L-823 Plug and Receptacle, Cable Connectors (5-4-71). Consolidated reprint June 1977 includes change 1.

Describes the subject specification requirements.

150/5345-27A Specification for L-807 Eight-foot and Twelve-foot Unlighted or Externally Lighted Wind Cone Assemblies (6-16-69).

Describes the subject specification requirement for a hinged steel pole support, an anodized tapered aluminum hinged base pole support, and an "A" frame fixed support with a pivoted center pipe support.

150/5345-28C Specification for L-851 Visual Approach Slope Indicators and Accessories (3-23-77).

Describes the specification requirements for visual approach slope indicator (VASI) and simple abbreviated visual approach slope indicator (SAVASI) equipment and accessories.

150/5345-36 Specification for L-808 Lighted Wind Tee (2-3-65).

Describes the subject specification requirements.

150/5345-39A FAA Specification L-853, Runway and Taxiway Centerline Retroreflective Markers (9-17-71).

Describes specification requirements for L-853 Runway and Taxiway Retroreflective markers, for the guidance of the public.

150/5345-42A FAA Specification L-857, Airport Light Bases, Transformer Housings and Junction Boxes (10-4-73).

Describes specification requirements for airport light bases, transformer housing and junction boxes for the guidance of the public.

150/5345-42A Ch 1 (11-14-75).

150/5345-43B FAA/DOD Specification L-856, High Intensity Obstruction Lighting Systems (11-1-73).

Contains equipment specifications for high intensity obstruction lighting systems.

150/5345-44A Specification for L-858 Retroreflective Taxiway Guidance Signs (7-20-71).

Describes the specification for retroreflective taxiway guidance signs.

150/5345-45 Lightweight Approach Light Structure (5-10-73).

Presents the specifications for lightweight structures for supporting lights as used in visual navigational aid systems.

150/5345-46 Specification for Semiflush Airport Lights (7-11-75). (Consolidated reprint incorporates ch. 1.)

Establishes the performance requirements and pertinent construction details for omnidirectional, unidirectional, and bidirectional semiflush inset light assemblies to be used for lighting airport runways and taxiways.

150/5345-47 Isolation Transformers for Airport Lighting Systems (7-28-75).

Contains the specifications requirements for series-to-series isolation transformers for use in airport lighting systems.

150/5345-48 Specification for Runway and Taxiway Edge Lights (8-1-75).

Contains the specification requirements for airport runway and taxiway edge lights for the guidance of the public.

150/5345-48 Ch 1 (7-13-76).

150/5345-49 Specification L-854, Radio Control Equipment (5-20-77).

Contains the specification for radio control equipment to be used for controlling airport lighting facilities.

150/5355-1A International Signs to Facilitate Passengers Using Airports (11-3-71).

Informs airport authorities of the desirability to provide international signs and diagrammatic maps within terminal buildings and of the need for clearly marked road signs for airports.

150/5355-2 Fallout Shelters in Terminal Buildings (4-1-69).

Furnishes guidance for the planning and design of fallout shelters in airport terminal buildings.

150/5360-2 Airport Cargo Facilities (4-6-64).

Provides guidance material on air cargo facilities.

150/5360-4A Guidelines for Federal Inspection Services Facilities at International Airports of Entry and at Landing Rights Airports (10-7-77).

Announces the availability a booklet containing more current information on the requirements for Federal Inspection Services at airports of entry and at landing rights airports.

150/5360-5 Announcement of Availability of the International Civil Aviation Organization (ICAO) Computer Data Bank Material (8-13-76).

Announces the availability of computer data bank material on airports shown in the International Civil Aviation Organization (ICAO) Regional Air Navigation Plans and how it can be obtained.

150/5360-6 Airport Terminal Building Development with Federal Participation (10-5-76).

Provides guidance pertaining to Federal participation in airport terminal building construction under the provisions of the Airport and Airway Development Act, as amended.

150/5360-7 Planning and Design Consideration for Airport Terminal Building Development (9-5-76).

Presents planning and design procedures to be considered in airport terminal building development funded under the Airport and Airway Development Act, as amended.

150/5360-8 Announcement of Availability of Information on Foreign Airport Planning, Design, Construction, and Trade Opportunities (9-24-76).

Provides information on the availability of the U.S. Dept. of Commerce Foreign Trade Opportunities Program and on publications issued on foreign airport planning, design, construction, and trade opportunities.

150/5370-2A Operational Safety on Airports With Emphasis on Safety During Construction (6-20-75). Consolidated reprint incorporates Ch. 1.

Presents guidelines concerning operational safety on airports with special emphasis on safety during periods of construction activity.

150/5370-4 Procedures Guide for Using the Standard Specifications for Construction of Airports (5-29-69).

Provides guidance to the public in the use and application of the Standard Specifications for Construction of Airports.

150/5370-5A Offshore Airports (2-21-75).

Announces to the public the availability of a two-volume report on offshore airport planning and construction methods and how to obtain the report.

150/5370-6 Construction Progress and Inspection Report—Federal-Aid Airport Program (3-16-70).

Provides for a report on construction progress and inspection of Federal-aid Airport Program (FAAP) projects, suggests a form for the report, and recommends use of the form unless other arrangements exist to obtain the type of information provided by the form.

150/5370-7 Airport Construction Controls To Prevent Air and Water Pollution (4-26-71).

Supplies guidance material on compliance with air and water standards during construction of airports developed under the Airport and Airway Development Act of 1970.

150/5370-9 Slip-Form Paving—Portland Cement Concrete (6-7-73).

Transmits guidance for the construction of Portland Cement Concrete pavements by the slip-form method.

150/5370-10 Standards for Specifying Construction of Airports (10-24-74).

Provides construction standards usually used to specify grading, drainage, paving, lighting, fencing, and turfing items of work on civil airports. ($7.25 Supt. Docs.) SN 050-007-00264-5.

150/5370-10 CH 1 (5-31-77).

150/5370-11 Use of Nondestructive Testing Devices in the Evaluation of Airport Pavements (6-4-76).

Provides guidance to the public on the use of nondestructive testing devices as aids in the evaluation of the load-carrying capacity of airport pavements.

150/5380-4 Ramp Operations During Periods of Snow and Ice Accumulation (9-11-68).

Directs attention to an increased accident potential when snow or ice accumulates on the surfaces of ramps and aircraft parking and holding areas and suggests some measures to reduce this potential.

150/5380-5 Debris Hazards at Civil Airports (3-8-71).

Discusses problems of debris at airports, gives information on foreign objects, and tells how to eliminate such objects from operational areas.

150/5390-1B Heliport Design Guide (8-22-77).

Contains design guidance material for the development of heliports, both surface and elevated.

PLANNING GRANT PROGRAM

150/5900-1A The Planning Grant Program for Airports (9-26-74).

Offers guidance to the sponsors of airport system plans and airport master plans on how to participate in the FAA's Planning Grant Program. It describes the application process and the administrative procedures to be followed in performing planning projects.

Air Navigational Facilities

SUBJECT NO. 170

170-3B Distance measuring Equipment (DME) (11-8-65).

Presents information on DME and some of its uses to pilots unfamiliar with this navigational aid.

170-6A Use of Radio Navigation Test Generators (3-30-66).

Gives information received from the Federal Communications Commission as to the frequencies on which the FCC will license test generators (used to radiate a radio navigation signal) within the scope of its regulations and gives additional information to assist the user when checking aircraft navigation receivers.

170-8 Use of Common Frequencies for Instrument Landing Systems Located on Opposite Ends of the Same Runway (11-7-66).

In the future, common frequencies may be assigned to like components of two instrument landing systems serving opposite ends of the same runway. This will include the localizers, glide slopes, and associated outer and middle marker compass locators (LOM and LMM).

170-9 Criteria for Acceptance of Ownership and Servicing of Civil Aviation Interest(s) Navigational and Air Traffic Control Systems and Equipment (11-26-68).

Contains a revised FAA policy under which the FAA accepts conditional ownership of equipment and systems from civil aviation interests, without the use of Federal funds, and operates, maintains, and provides the logistic support of such equipment.

170-10 FAA Recommendations to FCC on Licensing of Non-Federal Radio Navigation Aids (10-17-69).

Gives background information and describes the basis for recommendations to be made by the FAA to the Federal Communications Commission (FCC) regarding licensing of radio navigation aids.

170-11 Amendment of Federal Aviation Regulation Part 171 (FAR-171)—Cost of Flight and Ground Inspections (9-17-70).

Alerts the public to the amendment to FAR Part 171 pertaining to the payment of ground and flight inspection charges prior to the issuance of an approved IFR procedure.

170-12 Implementation of 50 KHz/Y Channels for ILS/VOR/DME (10-7-70).

Advises aircraft owners, operators and radio equipment manufacturers of plans for future implementation of split channel assignments in the aeronautical radio navigation bands.

170-13 Approach Lighting System Configurations and Energy Conservation (9-6-77).

Advises interested persons of the agency's plan for the next several years to improve federally owned approach light systems installed on instrument approach runways by adding low-impact resistance structures and reducing energy consumption.

Administrative

SUBJECT No. 180

183-30B FAA Designated Mechanic Examiners Directory (5-10-76).

Provides a revised directory of all FAA designated mechanic examiners as of Jan. 31, 1976.

183-31C FAA Designated Parachute Rigger Examiner Directory (5-10-76).

Provides a new directory of all FAA designated parachute rigger examiners as of Jan. 31, 1976.

183.29-1K Designated Engineering Representatives (7-1-77).

Lists FAA-approved Designated Engineering Representatives who are available for consulting work.

Flight Information

SUBJECT No. 210

210-1A National Notice to Airmen System (12-10-75).

Announces FAA policy for the preparation and issuance of essential flight information to pilots and other aviation interests.

210-3 National Notice to Airmen System—Elimination of NOTAM Code (5-22-70).

Announces changes in criteria and procedures for the Notice to Airmen System required to accommodate the transmission of all domestic Notice to Airmen data in clear contracted language and eliminate use of the NOTAM code on the domestic service A circuits.

210-4 National Notice to Airmen (NOTAM) System Handbook (3-3-77).

Announces the establishment of criteria for originating, preparing, and disseminating changes to essential flight information to pilots and other aviation interests as established by FAA Order 7930.1A.

210-4 National Notice to Airmen (NOTAM) System Handbook ADDENDUM.

Corrects contents pages.

210-5 Military Flying Activities (9-23-77).

Presents information about military flying activities in the National Airspace System, describes the various types of routes and areas allocated for this purpose, and explains how information on the location and status of these routes and areas can be obtained.

211-2 Recommended Standards for IFR Aeronautical Charts (3-20-67).

Sets forth standards recommended by the Federal Aviation Administration for the guidance of the public in the issuance of IFR aeronautical charts for use in the National Airspace System (NAS).

Advisory Circulars For Sale

This List contains those circulars that are sold by the Superintendent of Documents. (See numerical index for appropriate price, sequential lettering, if any, and date, etc.)

Acceptable Methods, Techniques, and Practices—Aircraft Alterations, AC 43.13-2.
Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair, AC 43.13-1.
Aircraft Dispatcher Written Test Guide, AC 65-4.
Airframe and Powerplant Mechanics Airframe Handbook, AC 65-15.
Airframe and Powerplant Mechanics Certification Guide, AC 65-2.
Airframe and Powerplant Mechanics Certification Information, AC 65-11.
Airframe and Powerplant Mechanics—General Handbook, AC 65-9.
Airframe and Powerplant Mechanics Powerplant Handbook, AC 65-12.
Airline Transport Pilot—Airplane—Practical Test Guide (Part 61 Revised), AC 61-77.
Airline Transport Pilot (Airplane) Written Test Guide, AC 61-18.
Airline Transport Pilot (Helicopter) Written Test Guide, AC 61-42.
Airport Drainage, AC 150/5320-5.
Airport Master Plans, AC 150/5070-6.
Aviation Instructors Handbook, AC 60-14.
Aviation Weather, AC 00-6.
Aviation Weather Services, AC 00-45.
Basic Glider Criteria Handbook, AC 21-3.
Basic Helicopter Handbook, AC 61-13.
Commercial Pilot Airplane Flight Test Guide, AC 61-55.
Commercial Pilot Airplane Written Test Guide, AC 61-71.
Federal Aviation Regulations Written Test Guide for Private, Commercial, and Military Pilots, AC 61-34.
Flight Engineer Written Test Guide, AC 63-1.
Flight Instructor Instrument—Airplane—Written Test Guide, AC 61-70.
Flight Instructor Practical Test Guide, AC 61-58.
Flight Instructor Airplane Written Test Guide, AC 61-72.
Flight Test Guide—Gyroplane, Private and Commercial, AC 61-30.
Flight Test Guide—Helicopter, Private and Commercial Pilot, AC 61-25.
Flight Test Guide (Part 61 revised)—Instrument Pilot Airplane, AC 61-56.
Flight Test Guide—Instrument Pilot Helicopter, AC 61-64.
Flight Test Guide (Part 61 revised)—Private Airplane, AC 61-54.
Flight Navigator Written Test Guide, AC 63-2.
Flight Training Handbook, AC 61-21.
Forming and Operating a Flying Club, AC 00-25.
General Aviation Inspection Aids, Summary, AC 20-7.
Ground Instructor—Instrument—Written Test Guide, AC 143-2.
Ground Instructor Written Test Guide—Basic and Advanced, AC 143-1.
Guide to Drug Hazards in Aviation Medicine, AC 91.11-1.
Heliport Design Guide, AC 150/5390-1.
Instrument Flying Handbook, AC 61-27.
Instrument Rating Written Test Guide, AC 61-8.
Inspection Authorization Study Guide, AC 65-19.
Medical Handbook for Pilots, AC 67-2.
Multiengine Airplane Class and Type Rating, AC 61-57.
Nondestructive Testing in Aircraft, AC 43-3.
Parachute Rigger Certification Guide, AC 65-5.
Personal Aircraft Inspection Handbook, AC 20-9.
Pilot Transition Courses for Complex Single-engine and Light, Twin-engine Airplanes, AC 61-9.
Pilot's Handbook of Aeronautical Knowledge, AC 61-23.
Pilot's Weight and Balance Handbook, AC 91-23.
Planning the Metropolitan Airport System, AC 150/5070-5.
Planning the State Airport System, AC 150/5050-3.
Private and Commercial Pilot, Flight Test Guide, AC 61-59.
Private and Commercial Pilot Glider, Flight Test Guide, AC 61-61.
Private and Commercial Pilot Gyroplane, Flight Test Guide, AC 61-60.
Private and Commercial Pilots Refresher Courses, AC 61-10.
Private and Commercial Pilot—Rotorcraft/Helicopter—Written Test Guide, AC 61-73.
Private Pilot (Airplane) Flight Training Guide, AC 61-2.
Private Pilot Written Test Guide, AC 61-32.
Standards for Specifying Construction of Airports, AC 150/5370-10.
Student Pilot Guide, AC 61-12.
Terrain Flying, AC 91-15.
Ultrasonic Nondestructive Testing for Aircraft, AC 43-7.
U.S. Civil Aircraft Register, AC 20-6.
Written Test Guide, Flight Instructor—Glider, AC 61-75.
Written Test Guide, Flight Instructor—Rotorcraft-Helicopter, AC 61-74.
Written Test Guide—Airplane—Flight Instructor, AC 61-72.
Written Test Guide—Airplane—Commercial Pilot, AC 61-71.

Internal Publications

Contractions Handbook, 7340.1F (2-1-78).

Gives approved word and phrase contractions used by personnel connected with air traffic control, communications, weather, charting, and associated services. (Sub. $12.00-$15.00 for-

eign—Supt. Docs.) SN 050-010-90034-2.

Location Identifiers, 7350.4L (1-26-78).

Incorporates all authorized 3-letter location identifiers for special use in United States, worldwide, and Canadian assignments. (Sub. $18.00-$23.00 foreign—Supt. Docs.) TD 4.310:.

Air Traffic Control Handbook, 7110.65A (1-1-78).

Prescribes air traffic control procedures and phraseology for use by personnel providing air traffic control services. Controllers are required to be familiar with the provisions of this handbook which pertain to their operational responsibility and to exercise their best judgment if they encounter situations not covered by it. (Sub. $16.00-$20.00 foreign—Supt. Docs.) SN 050-007-91609-4.

Flight Services, 7110.10D (1-1-77).

This handbook consists of two parts. Part I, the basic, prescribes procedures and phraseology for use by personnel providing flight assistance and communications services. Part II, the teletypewriter portion, includes Services A and B teletypewriter operating procedures, pertinent International Teletypewriter Procedures, and the conterminous U.S. Service A Weather Schedules. (Sub. $18.30-$22.90 foreign—Supt. Docs.) TD 4.308: F 64/977.

United States Standard for Terminal Instrument Procedures (TERPS), 8260.3B (July 1976).

Contains criteria which shall be used to formulate, review, approve, and publish procedures for instrument approach and departure of aircraft to and from civil and military airports. These criteria are for application at any location over which an appropriate U.S. agency exercises jurisdiction. ($2.80 single copy. Supt. Docs.) (Changes sold separately as issued.) SN 050-007-00345-5.

International Flight Information Manual, Vol. 25 (April 1977).

This Manual is primarily designed as a preflight and planning guide for use by U.S. nonscheduled operators, business and private aviators contemplating flights outside of the United States.

The Manual, which is complemented by the International Notams publication, contains foreign entry requirements, a directory of aerodromes of entry including operational data, and pertinent regulations, and restrictions. It also contains passport, visa, and health requirements for each country. Published annually with quarterly amendments. (Annual Sub. $9.00; $11.25 foreign—Supt. Docs.) TD 4.309:24/976.

International Notams.

Covers notices on navigational facilities and information on associated aeronautical data generally classified as "Special Notices." Acts as a notice-to-airmen service only. Published weekly. (Annual Sub. $28.10 domestic—$35.15 foreign—Supt. Docs.) TD4.11:.

Airman's Information Manual:

Part 1—Basic Flight Information and ATC Procedures.

This part is issued semiannually and contains basic fundamentals required to fly in the U.S. National Airspace System. Among other data it also contains adverse factors affecting Safety of Flight; Health and Medical Facts of interest to pilots; ATC information affecting rules, regulations and procedures; a Pilot/Controller Glossary; Air Defense Identification Zones (ADIZ); Designated Mountainous Areas; and Emergency Procedures. (Annual Sub. $5.00, foreign $6.25. Supt. Docs.) TD 4.12: pt. 1/.

NOTICE

Termination of AIM Parts 2 and 3

The FAA is terminating publication of Part 2, "Airport Directory" and Part 3, "Operational Data and Special Notices" effective May 18, 1978. This information will be contained in a new geographical-oriented, seven-volume issuance titled "Airport/Facility Directory" (AFD), to be produced and sold by the National Ocean Survey. Present subscribers of AIM Parts 2 and 3 will be notified of this changeover by the Superintendent of Documents. Prospective subscribers wishing information on the new AFD should write to:

Distribution Division,
National Ocean Survey,
Riverdale, MD 20840

This termination of Parts 2 and 3 in no way affects the issuance of Parts 1, 3A, and 4 of the AIM, except that Part 3A will carry only the title "Notices to Airmen", and not "3A Notices to Airmen." Parts 1 and 4 and Notices to Airmen will continue to be sold through the Superintendent of Documents on subscription basis.

Notices to Airmen

Issued every 14 days and contains current Notices to Airmen considered essential to the safety of flight as well as supplemental data to all Parts of AIM. (Annual subscription $20.55; $25.70 foreign. Supt. Docs.) TD 4.12: Pt. 3A.

Part 4—Graphic Notices and Supplemental Data.

Part 4 is issued quarterly and contains abbreviations used in all parts of AIM; Parachute Jump Areas; Special Notice—Area Graphics; Terminal Area Graphics; Terminal Radar Service Area Graphics; Olive Branch Routes and other data not requiring frequent change. (Annual Sub. $14.40, foreign $18.00. Supt. Docs.) TD 4.12: pt. 4/.

Type Certificate Data Sheets and Specifications

Vol. I Single Engine Airplanes (TCDS 1) (Sub. $38.00, foreign $47.50. Supt. Docs.).

Vol. II Small Multiengine Airplanes (TCDS 2) (Sub. $28.00, foreign $35.00. Supt. Docs.).

Vol. III Large Multiengine Airplanes (TCDS 3) (Sub. $32.00, foreign $40.00. Supt. Docs.).

Vol IV Rotorcraft, Gliders, and Balloons (TCDS 4) (Sub. $16.50, foreign $20.75. Supt. Docs.).

Vol V Aircraft Engines and Propellers (TCDS 5) (Sub. $27.00, foreign $33.75. Supt. Docs.).

Vol. VI Aircraft Listing and Aircraft Engine and Propeller Listing (SN 050-007-00360-9) (Single Copy $4.15, foreign $5.20. Supt. Docs.).

Volumes I, II, III, IV, and V will be sold on a subscription basis and monthly supplementary service is included in the sales price.

Volume VI will be sold on a single-sales basis and will be isssued as a revised edition when sufficient changes warrant.

Summary of Supplemental Type Certificates, January 1976.

Contains all supplemental type certificates issued by FAA regarding design changes in aircraft, engines, or propellers. List includes description of change, the model and type certificate number, the supplemental type certificate number, and the holder of the change. Quarterly supplements provided. ($43.00—Sub., foreign $54.00. Supt. Docs.) TD 4.36:976.

NOTICE

The January 1978 issues of the Summary of Airworthiness Directives—Volumes I and II, will be sold and distributed for the Superintendent of Documents by the Federal Aviation Administration from Oklahoma City, Oklahoma. Requests for subscriptions to either of these publications should be sent to:

U.S. Department of Transportation, Federal Aviation Administration, P.O. Box 25461, Attn: ACC-23, Oklahoma City, Okla. 73125.

Subscription service will consist of the summary and automatic biweekly updates to each summary for a 2-year period. Make certified checks or money orders payable to Federal Aviation Administration.

Summary of Airworthiness Directives for Small Aircraft (1-1-78) Volume I.

Presents, in volume form, all the Airworthiness Directives for small aircraft issued through December 31, 1977. AD's for engines, propeller, and equipment are included in each volume. Each volume is arranged alphabetically by product manufacturer. ($12.50 plus $3.15 additional for foreign handling.) SN 050-007-00425-7.

Summary of Airworthiness Directives for Large Aircraft (1-1-78) Volume II.

Presents, in volume form, all the Airworthiness Directives for large aircraft (over 12,500 pounds maximum certificated takeoff weight) issued through December 31, 1977. AD's for engines, propellers, and equipment are included in each volume. ($10.75 plus $2.70 additional for foreign handling.) SN 050-007-00426-5.

STATUS OF THE FEDERAL AVIATION REGULATION AS OF MARCH 15, 1978

The FAA publishes the Federal Aviation Regulations to make readily available to the aviation community the regulatory requirements placed upon them. These Regulations are sold as individual Parts by the Superintendent of Documents.

The more frequently amended Parts are sold on subscription service (that is, subscribers will receive Changes automatically as issued), while the less active Parts are sold on a single-sale basis. Changes to single-sale Parts will be sold separately as issued. Information concerning these Changes will be furnished by FAA through its "Status of the Federal Aviation Regulations, AC 00-44." Instructions for ordering this free status list are given in the front of each single-sale Part.

NOTE

The Special Federal Aviation Regulations (SFAR) which are presently in effect are now being included in their related FAR Part.

The following list indicates the breakdown of the single-sale Parts and the subscription Parts. Check or money order made payable to the Superintendent of Documents should be included with each order. Submit orders for single-sales and subscription Parts on different order forms. No COD orders are accepted. All FAR Parts should be ordered from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Parts sold on subscription service

Part and title	Publication date	Catalog No.	Price		
			Domestic	Additional for foreign handling	Changes issued to date
1 Definitions and Abbreviations	June 1974	TD 4.6:1	$13.00	$3.25	6
21 Certification Procedures for Products and Parts.	May 1974	TD 4.6:21	18.00	4.50	10
23 Airworthiness Standards: Normal, Utility, and Acrobatic Category Airplanes.	June 1974	TD 4.6:23	12.00	3.00	8
25 Airworthiness Standards: Transport Category Airplanes.	do	TD 4.6:25	22.00	5.50	7
33 Airworthiness Standards: Aircraft Engines.	Aug. 1974	TD 4.6:33	10.00	2.50	3
36 Noise Standards: Aircraft Type and Airworthiness Certification.	June 1974	TD 4.6:36	17.00	4.25	7
37 Technical Standard Order Authorizations.	May 1974	TD 4.6:37	13.00	3.25	6
63 Certification: Flight Crewmembers Other Than Pilots.	Sept. 1974	TD 4.6:63	6.00	1.50	2
91 General Operating and Flight Rules.	March 1974	TD 4.6:91	26.00	6.50	25
93 Special Air Traffic Rules and Airport Traffic Patterns.	do	TD 4.6:93	14.00	3.50	7
103 Part Revoked as July 1, 1976[1]					
121 Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft.	April 1974	TD 4.6:121	19.00	4.75	26
123 Certification and operations: Air Travel clubs using Large Airplanes.	do	TD 4.6:123	10.00	2.50	4
139 Certification and Operations: Land Airports Serving CAB-Certificated Air Carriers.	December 1974.	TD 4.6:139	10.00	2.50	4

[1] The regulations for the transportation of hazardous material by air is set forth in Part 175—Carriage by Aircraft, effective July 1, 1976, published in 41 FR 16106, April 15, 1976. This part is issued by the Materials Transportation Bureau, Department of Transportation. For information concerning hazardous material regulations, contact the Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

Parts sold on single-sales basis

Part	Title	Publication date	Stock number	Price [1]
11	General Rule-Making Procedures.	May 1974	SN 050-007-00286-0	$1.30
	Change 1	Feb. 1, 1974	SN 050-007-00286-6	.45
		Jan. 1, 1975		
	Change 2	Mar. 18, 1976	SN 050-007-00325-1	.40
	Change 3	Jan. 1, 1976	SN 050-007-00340-4	.40
	Change 4	Sept. 6, 1977	SN 050-007-00390-1	.80
13	Enforcement Procedures	May 1974	SN 050-007-00230-1	.70
	Change 1	Aug. 2, 1976	SN 050-007-00334-0	.40
	Change 2	Dec. 13, 1976	SN 050-007-00357-9	.40
27	Airworthiness Standards: Normal Category Rotorcraft.	August 1974	SN 050-007-00244-1	2.10
	Change 1	Oct. 31, 1974	SN 050-007-00255-6	.75
	Change 2	Feb. 5, 1976	SN 050-007-00309-9	.35
	Change 3	Feb. 1, 1977	SN 050-007-00362-5	1.30
	Change 4	May 2, 1977	SN 050-007-00370-6	1.40
	Change 5	Sept. 1, 1977	SN 050-007-00393-5	1.40
29	Airworthiness Standards: Transport Category.	August 1974	SN 050-007-00245-9	1.70
	Change 1	Oct. 31, 1974	SN 050-007-00256-4	.70
	Change 2	Feb. 5, 1976	SN 050-007-00310-2	.35
	Change 3	Jan. 14, 1975	SN 050-007-00351-0	.40
		Dec. 31, 1975		
	Change 4	Feb. 1, 1977	SN 050-007-00367-6	1.45
	Change 5	May 2, 1977	SN 050-007-00371-4	1.60
	Change 6	Sept. 1, 1977	SN 050-007-00394-3	1.40
31	Airworthiness Standards: Manned Free Balloons.	August 1974	SN 050-007-00246-7	.40
	Change 1	Feb. 1, 1977	SN 050-007-00361-7	.65
35	Airworthiness Standards: Propellers.	August 1974	SN 050-007-00247-5	.80
	Change 1	Feb. 1, 1977	SN 050-007-00353-3	.65
	Change 2	May 2, 1977	SN 050-007-00369-2	1.10
39	Airworthiness Directives [2]	May 1974	SN 050-007-00229-7	.35
43	Maintenance, Preventive Maintenance, Rebuilding and Alteration.	January 1974	SN 050-007-00311-1	1.80
45	Identification and Registration marking.	May 1974	SN 050-007-00231-9	.65
	Change 1	Sept. 14, 1977	SN 050-007-0395-1	.80
47	Aircraft Registration	May 1974	SN 050-007-000312-9	.85
	Change 1	Sept. 8, 1976	SN 050-007-000335-8	.40
	Change 2	Jan. 30, 1978	SN 050-007-00422-2	.80
49	Recording of Aircraft Titles and Security Documents.	May 1974	SN 050-007-00232-7	.50
	Change 1	Sept. 8, 1976	SN 050-007-00336-6	.40
61	Certification: Pilots and Flight Instructors.	November 1974	SN 050-007-00313-7	2.00
	Change 1	Dec. 22, 1976	SN 050-007-00353-6	.50
	Change 2	May 9, 1977	SN 050-007-00372-2	.80
65	Certification: Airmen Other Than Flight Crewmembers.	September 1974	SN 050-007-00314-5	1.25
	Change 1	Oct. 17, 1977	SN 050-007-00399-4	.80
67	Medical Standards and Certification.	September 1974	SN 050-007-00248-3	.50
	Change 1	Dec. 21, 1976	SN 050-007-00341-2	.40
71	Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting points [3].	January 1975	SN 050-007-00273-4	.85
	Change 1	July 28, 1975	SN 050-007-00290-4	.35
73	Special use Airspace [3]	January 1975	SN 050-007-00274-2	.40

Parts sold on single-sales basis—Continued

Part	Title	Publication date	Stock number	Price [1]
	Change 1	July 28, 1975	SN 050-007-00291-2	$0.35
75	Establishment of Jet Routes and Area High Routes [2].	January 1975	SN 050-007-00275-1	.40
	Change 1	Apr. 26, 1976	SN 050-007-00326-9	.40
77	Objects Affecting Navigable Airspace.	January 1975	SN 050-007-00276-9	1.10
95	IFR Altitudes [3]	do	SN 050-007-00277-7	.50
	Change 1	Feb. 13, 1975	SN 050-007-00285-8	.35
97	Standard Instrument Approach procedures [4].	January 1975	SN 050-007-00278-5	.45
99	Security Control of Air Traffic	March 1974	SN 050-007-0022406	.70
	Change 1	Mar. 11, 1976	SN 050-007-00324-2	.40
101	Moored Balloons, Kites, Unmanned Rockets, and unmanned Free Balloons.	March 1974	SN 050-007-00223-8	.65
	Change 1	Aug. 20, 1974	SN 050-007-00242-4	.50
105	Parachute Jumping	March 1974	SN 050-007-00315-3	.55
	Change 1	Nov. 29, 1976	SN 050-007-00344-7	.40
107	Airport Security	March 1974	SN 050-007-00225-4	.40
	Change 1	Dec. 9, 1976	SN 050-007-00346-1	.40
127	Certification and Operations of Scheduled Air Carriers with Helicopters.	April 1974	SN 050-007-00316-1	1.80
	Change 1	Sept. 14, 1974	SN 050-007-00317-0	.35
	Change 2	Feb. 1, 1977	SN 050-007-00364-1	.65
129	Operations of Foreign Air Carriers.	April 1974	SN 050-007-00228-9	.45
	Change 1	Oct. 9, 1975	SN 050-007-00293-9	.35
	Change 2	Aug. 23, 1976	SN 050-007-00333-1	.40
	Change 3	Nov. 29, 1976	SN 050-007-00347-1	.35
133	Rotorcraft External-Load Operations.	November 1974	SN 050-007-00318-8	.55
	Change 1	Feb. 1, 1977	SN 050-007-00365-0	.65
	Change 2	Aug. 10, 1977	SN 050-007-00380-3	.90
	Change 3	June 25, 1977	SN 050-007-00389-7	.90
135	Air Taxi Operators and Commercial Operators of Small Aircraft.	November 1974	SN 050-007-00319-6	2.50
	Change 1	Nov. 15, 1974	SN 050-007-00320-0	.35
		Dec. 9, 1974		
	Change 2	May 15, 1975	SN 050-007-00321-8	.35
	Change 3	Nov. 29, 1976	SN 050-007-00346-3	.45
	Change 4	Feb. 1, 1977	SN 050-007-00366-8	.65
	Change 5	May 16, 1977	SN 050-007-00374-9	.90
	Change 6	Dec. 24, 1965	SN 050-007-00378-1	1.50
		Jan. 1, 1977		
		Dec. 22, 1976		
	Change 7	Sept. 21, 1977	SN 050-007-00397-8	.70
137	Agricultural Aircraft Operations	November 1974	SN 050-007-00258-1	.50
	Change 1	May 24, 1976	SN 050-007-00327-7	.35
	Change 2	Sept. 20, 1976	SN 050-007-00337-4	.40
141	Pilot Schools	November 1974	SN 050-007-00322-6	1.15
143	Ground Instructors	September 1974	SN 050-007-00249-1	.45
145	Repair Stations	January 1974	SN 050-007-00220-3	.85
	Change 1	Nov. 29, 1976	SN 050-007-00349-8	.40
147	Aviation Maintenance Technician Schools.	September 1974	SN 050-007-00250-5	.65
	Change 1	Nov. 29, 1976	SN 050-007-00350-1	.40
149	Parachute Lofts	January 1974	SN 050-007-00221-1	.50
151	Federal Aid to Airports	December 1974	SN 050-007-00261-1	1.55
152	Airport Aid Program	do	SN 050-007-00323-4	1.35
	Change 1	Sept. 26, 1976	SN 050-007-00338-2	.40
	Change 2	Oct. 21, 1976	SN 050-007-00342-1	.45
	Change 3	June 27, 1977	SN 050-007-00387-1	.70
	Change 4	Aug. 25, 1977	SN 050-007-00396-0	.90
153	Acquisition of U.S. land for public airports.	December 1974	SN 050-007-00262-9	.50
154	Acquisition of U.S. land for public airports under the Airport and Airway Act of 1970.	June 27, 1977	SN 050-007-00388-9	.70

Parts sold on single-sales basis—Continued

Part	Title	Publication date	Stock number	Price[1]
154	Con't		SN 050-007-00269-6	.40
	Change 1	June 27, 1977	SN 050-007-00388-9	.70
155	Release of Airport Property from Surplus Property Disposal Restrictions.	December 1974	SN 050-007-00270-0	.40
157	Notice of Construction, Alteration, Activation, and Deactivation of Airports.	January 1975	SN 050-007-00279-3	.80
159	National Capital Airports	December 1974	SN 050-007-00268-8	1.00
	Change 1	June 13, 1976	SN 050-007-00330-7	.35
169	Expenditure of Federal Funds for nonmilitary airports on air navigational facilities thereon.	January 1975	SN 050-007-00280-7	.35
171	Non-Federal Navigation Facilities	do	SN 050-007-00281-5	1.10
	Change 1	Aug. 19, 1975	SN 050-007-00297-1	.65
183	Representatives of the Administrator.	May 1974	SN 050-007-00233-5	.45
	Change 1	Jan. 9, 1976	SN 050-007-00352-8	.35
	Change 2	Aug. 30, 1977	SN 050-007-00398-6	.70
185	Testimony by Employees and Production of Records in Legal Proceedings and Service of Legal Process and Pleadings.	May 1974	SN 060-007-00237-8	.80
187	Fees	do	SN 050-007-00234-3	.40
189	Use of Federal Aviation Administration Communication System.	do	SN 050-007-00235-1	.40
191	Withholding Security Information From Disclosure Under the Air Transportation Security Act of 1974.	November 1976	SN 050-007-00359-5	.40

[1]Add 25% for foreign handling.

[2]Due to their length, complexity, and frequency of issuance, individual Airworthiness Directives are published separately in the FEDERAL REGISTER. Copies of Airworthiness Directives that have been issued are for sale in summary form by DOT, FAA Aeronautical Center (Consigned agent for Superintendent of Documents), P.O. Box 25461, Oklahoma City, Okla. 73125, Attn: AAC-23.

[3]Due to their length, complexity, and frequency of issuance, individual airspace designations, airways descriptions, restricted areas, jet routes descriptions, and en route IFR altitudes are not included in the publication of these basic parts. Such descriptions are published in the FEDERAL REGISTER and depicted on appropriate aeronautical charts. Aeronautical charts can be obtained from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Distribution Division (C-44), National Ocean Survey, Riverdale, Md. 20840.

[4]Standard instrument approach procedures are published in the FEDERAL REGISTER by reference to FAA documents which are available for examination in the Rules Docket (AGC-24) and the National Flight Data Center, FAA Headquarters, Washington, D.C., and at the appropriate FAA Regional Offices and Flight Inspection District Offices. These approach procedures can be obtained from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Distribution Division (C-44), National Ocean Survey, Riverdale, Md. 20840.

BROOKS C. GOLDMAN,
Director, Office of Management Systems.

[FR Doc. 78-12355 Filed 5-5-78; 8:45 am]

Federal Register

MONDAY, MAY 8, 1978
PART IV



DEPARTMENT OF DEFENSE

CORPS OF ENGINEERS

■

WATER RESOURCES POLICIES & AUTHORITIES

FLOOD DAMAGE REDUCTION MEASURES IN URBAN AREAS

[3710-92]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

[ER 1165-2-21]

PART 238—WATER RESOURCES POLICIES & AUTHORITIES

Flood Damage Reduction Measures in Urban Areas

AGENCY: U.S. Army Corps of Engineers.

ACTION: Final rule.

SUMMARY: The Chief of Engineers is promulgating a regulation for Civil Works elements of the U.S. Army Corps of Engineers to follow for participating in urban flood control projects. This regulation provides current policy guidance and procedures when participating with local interests to alleviate existing and future flood damage problems. It establishes criteria to distinguish between flood damage reduction measures and storm sewer systems in urban areas. Provision of urban drainage systems is customarily regarded as storm drainage which, with all appurtenances, is considered a local responsibility. This action seeks to provide an economically efficient degree of flood protection consistent with safety of life and property and wise land use in urban and urbanizing areas. It further encourages long range planning for flood damage reduction measures and storm sewer systems in these areas.

EFFECTIVE DATE: May 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Howard J. Prante, 202-693-6807, or write: Office of the Chief of Engineers, Forrestal Building, Washington, D.C. 20314, Attn: DAEN-CWR-R.

SUPPLEMENTARY INFORMATION: Congress in the Flood Control Act of 1936, established as a nationwide policy that flood control on navigable waters or their tributaries is in the interest of the general welfare and is therefore a proper activity of the Federal Government in cooperation with the States and local entities. It provided that the Federal Government may improve streams or participate in improvements "for flood-control purposes if the benefits to whomsoever they may accrue are in excess of the estimated costs, and if the lives and social security of people are otherwise adversely affected." The 1936 and subsequent acts further specified the details of Federal participation. The scope of the Federal interest includes consideration of all alternatives in controlling flood waters, reducing the susceptibility of property to flood damage, and relieving human and financial losses.

Non-Federal participation in flood control projects is required. Non-Federal participation usually includes provision at local cost of all lands, easements, rights-of-way, as well as all necessary alterations and relocations to utilities, streets, bridges, buildings, storm drains, and other structures and improvements. The sponsoring local agency must also agree to hold the United States free from damages due to the construction works, not including damages due to the fault or negligence of the United States or its contractors; and assure continued non-Federal operation and maintenance of the project after completion. The above requirements are generally known as the "a-b-c" requirements of local cooperation from their description in section 3 of the 1936 Flood Control Act an amended. Other additional local participation is required where special local conditions warrant.

The Army Corps of Engineers is authorized by section 206 of the 1960 Flood Control Act, as amended, to provide information, technical planning assistance, and guidance to non-Federal entities to help them in identifying the magnitude and extent of the flood hazard and in planning wise use of the flood plains.

The following regulation is hereby established as set forth below:

PART 238—FLOOD DAMAGE REDUCTION MEASURES IN URBAN AREAS

This is an interpretive rule providing agency guidance concerning Corps of Engineers participation in urban flood control projects. It is exempt from the Notice of Proposed Rulemaker requirements in 5 U.S.C. 553(6)(3)(A).

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

Dated: April 27, 1978.

Approved:

THOMAS J. WOODALL,
Lieutenant Colonel, Corps of Engineers Acting Executive Director, Engineer Staff.

PART 238—WATER RESOURCES POLICIES AND AUTHORITIES: FLOOD DAMAGE REDUCTION MEASURES IN URBAN AREAS

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238.8 Other participation.
238.9 Local cooperation.
238.10 Coordination with other Federal agencies.

AUTHORITY: Pub. L. 738, 74th Congress, 33 U.S.C. 701a.

§ 238.1 Purpose.

This regulation provides policies and guidance for Corps of Engineers participation in urban flood damage reduction projects and establishes criteria to distinguish between improvements to be accomplished by the Corps under its flood control authorities and storm sewer systems to be accomplished by local interests.

§ 238.2 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities.

§ 238.3 References.

(a) Executive Order 11988—Floodplain Management, dated 24 May 1977.
(b) U.S. Water Resources Council, Floodplain Management Guidelines, (43 FR 6030), 10 February 1978.
(c) ER 1105-2-811.
(d) ER 1140-2-302.
(e) ER 1140-2-303.
(f) EP 1165-2-2.

§ 238.4 Definitions.

For purposes of this regulation the following definitions apply:

(a) "Urban areas" are cities, towns, or other incorporated or unincorporated political subdivisions of States that:

(1) Provide general local government for specific population concentrations, and,

(2) Occupy an essentially continuous area of developed land, containing such structures as residences, public and commercial buildings, and industrial sites.

(b) "Flood damage reduction works in urban areas" are the adjustments in land use and the facilities (structural and non-structural) designed to reduce flood damages in urban areas from overflow or backwater due to major storms and snowmelt. They include structural and other engineering modifications to natural streams or to previously modified natural waterways. Flood damage reduction works are designed to modify flood behavior typified by temporary conditions of inundation of normally dry land from the overflow of rivers and streams or from abnormally high coastal waters due to severe storms.

(c) "Storm sewer systems" are the facilities in urban areas designed to collect and convey runoff from rainfall or snowmelt in the urban area to natural water courses or to previously

modified natural waterways. They include storm drains, inlets, manholes, pipes, culverts, conduits, sewers and sewer appurtenances, on-site storage and detention basins, curbs and gutters, and other small drainageways that remove or help to manage runoff in urban areas. Storm sewer systems are designed to solve storm drainage problems, which are typified by excessive accumulation of runoff in depressions; overland sheet flow resulting from rapid snowmelt or rainfall; and excessive accumulation of water at the facilities listed in this paragraph because of their limited capacity.

§ 238.5 Comprehensive planning.

Coordinated comprehensive planning at the regional or river basin level, or for an urban or metropolitan area, can help to achieve solutions to flood problems that adequately reflect future changes in watershed conditions, and help to avoid short-sighted plans serving only localized situations. This planning is particularly important in areas where significant portions of a watershed are expected to be urbanized in the future. Changes in land use may result in major alterations of the runoff characteristics of the watershed. Hydrologic changes must be projected for the period of analysis. In this effort, responsible local planning organizations should provide information and assist the Corps in development of projected land uses and expected practices for collection and conveyance of runoff over the period of analysis. Conversely, the Corps may be able to provide non-Federal interests with valuable information about water related consequences of alternative land uses and drainage practices.

238.6 General policy.

(a) Satisfactory resolution of water damage problems in urban areas often involve cooperation between local non-Federal interests and the Federal flood control agencies. In urban or urbanizing areas, provision of a basic drainage system to collect and convey the local runoff to a stream is a non-Federal responsibility. This regulation should not be interpreted to extend the flood damage reduction program into a system of pipes traditionally recognized as storm drainage systems. Flood damage reduction works generally address discharges that represent a serious threat to life and property. The decision criteria outlined below therefore exclude from consideration under flood control authority small streams and ditches with carrying capacities typical of storm sewer pipes. Location of political boundaries will not be used as a basis for specifying project responsibility. Project responsibilities can be specified as follows:

(1) Flood damage reduction works, as defined in this regulation, may be accomplished by the Corps of Engineers.

(2) Construction of storm sewer systems and components thereof will be a non-Federal responsibility. Non-Federal interests have a responsibility to design storm sewer systems so that residual damages are reduced to an acceptable level.

(b) Consideration will be given to the objectives and requirements of Executive Order 11988 (reference 3a) and the general guidelines therefor by the U.S. Water Resources Council (reference 3b).

§ 238.7 Decision criteria for participation.

(a) *Flood control.* Water damage problems associated with natural streams or modified natural waterways may be addressed under the flood control authorities downstream from the point where the flood discharge is greater than 800 cubic feet per second for the 10-percent flood (one chance in ten of being equalled or exceeded in any given year) under conditions expected to prevail during the period of analysis. Drainage areas of less than 1.5 square miles shall be assumed to lack adequate discharge to meet the above criterion. Flood damage reduction works must conform to the definition in paragraph 4b and must be justified based on Corps of Engineers evaluation procedures in use at the time the evaluation is made.

(b) *Storm sewer system.* Water damage problems not consistent with the above criteria for flood control will be considered to be a part of local storm drainage to be addressed as part of the consideration of an adequate storm sewer system. The purpose of this system is to collect and convey to a natural stream or modified natural waterway the runoff from rainfall or snowmelt in the urbanized area.

(c) *Man-made conveyance structures.*

(1) Man-made conveyance structures will be assumed to be a part of storm sewer systems except when: (i) A natural stream has been or is to be conveyed in the man-made structure; or (ii) The man-made structure is a cost-effective alternative to improvement of a natural stream for flood damage reduction purposes or is an environmentally preferable and economically justified alternative. Water damages associated with inadequate carrying capacity of man-made structures should be designated as a flood problem or a local drainage problem in a manner consistent with the structure's classification as flood damage reduction works or a part of a storm sewer system.

(2) Man-made structures that convey sanitary sewage or storm runoff, or a combination of sanitary and storm sewage, to a treatment facility will not be classified as flood damage reduction works. Flows discharged into a natural or previously modified natural waterway for the purpose of conveying the water away from the urbanized area will be assumed to be a part of the flow thereof regardless of quality characteristics.

(d) *Joint projects.* Certain conditions may exist whereby the Corps of Engineers and the Department of Housing and Urban Development (HUD), or another Federal agency, could jointly undertake a project that would be impractical if one agency were to undertake it alone. The Corps may, for example, under provisions of section 219 of the Flood Control Act of 1965, design or construct a project that is part of a larger HUD plan for an urban area (see ER 1140-2-302). Such efforts should be undertaken only when requirements cannot be handled better by one agency acting alone. If a joint effort is preferable, then the Corps may participate as required.

(e) *Disagreements.* If a disagreement arises between the Corps and another Federal agency that cannot be resolved at the field level, the matter will be forwarded to HQDA (DAEN-CWR) Washington, D.C. 20314, for guidance.

§ 238.8 Other participation.

In addition to providing flood damage reduction works in urban areas, the Corps may provide related services to State and local governments on a reimbursable basis. Under Title III of the Inter-governmental Cooperation Act of 1968, specialized or technical services for which the Corps has specific expertise may be furnished only when such services cannot be procured reasonably and expeditiously from private firms (see ER 1140-2-303).

§ 238.9 Local cooperation.

(a) Cost sharing and other provisions of local cooperation shall be in conformity with applicable regulations for structural and non-structural flood damage reduction measures.

(b) Responsible non-Federal entities will be required to provide satisfactory assurances that they will adopt, enforce, and adhere to a sound, comprehensive plan for flood plain management for overflow areas of communities involved. To this end, District Engineers will inform HUD, and other concerned Federal and non-Federal planning and governing agencies, of flood plain management services available under Section 206 of the Flood Control Act of 1960, as amended (33 USC 709a).

§ 238.10 Coordination with other Federal agencies.

In conducting flood damage reduction studies, reporting officers shall comply with the 1965 Agreement between the Soil Conservation Service

and the Corps (contained in EP 1165-2-2) in determining the responsible Federal agency. Corps personnel should also keep abreast of the public works programs administered by other Federal agencies, such as the Environmental Protection Agency, the Department of Housing and Urban Development, Farmers Home Administration and the Department of Commerce, in order to coordinate flood control improvements with storm sewer system improvements and to avoid program overlap. Coordination of planning activities with A-95 clearinghouses will help to achieve this objective (see ER 1105-2-811).

[FR Doc. 78-12433 Filed 5-5-78; 8:45 am]



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